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THE

NATIONAL BANKRUPTCY ACT

OF

1898

WITH

NOTES, PROCEDURE AND FORMS

BY J. ADRIANCE BUSH

OF THE NEW YORK BAR

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ABBREVIATIONS.

Abb. (U. S.)	Abbott's United States Reports.
Alb. L. J	Albany Law Journal.
Amer. Law Reg	American Law Register.
Ben	Benedict's District Court Reports.
Biss	Bissell's Reports.
Blatchf	Blatchford's Circuit Court Reports.
Bond	Bond's Reports.
Brun. Col. Cas	Brunner's Collected Cases.
Chi. Leg. News	Chicago Legal News.
Cin. Law Bul	Cincinnati Law Bulletin.
Cin. Law J	Cincinnati Law Journal.
Cliff	Clifford's Reports.
Crabbe	Crabbe's Reports.
Cranch C. C	Cranch's Circuit Court Reports.
Deady	Deady's Reports.
Dill	Dillon's Circuit Court Reports.
Fed. Cas	Federal Cases.
Fed. Rep	Federal Reporter.
Flip	Flippin's Reports.
Law Rep	Law Reporter.
How	Howard's United States Supreme Court Reports.
Hughes	Hughes' Reports.
Law Rep	Law Reporter.
Leg. Int	Legal Intelligencer.
Low	Lowell's Decisions.
McLean	McLean's Reports.
N. B. R	National Bankruptcy Register Reports.
N. J. Law J	New Jersey Law Journal.
N. Y. Leg. Obs	New York Legal Observer.
Pa. St	Pennsylvania State Reports.
Penn. L. J	Pennsylvania Law Journal.
Saw	Sawyer's Reports.
Story	Story's Reports.
U. S	United States Supreme Court Reports.
Wall	Wallace's United States Supreme Court Reports.
Wall. Sr	Wallace's Reports (Circuit Court).
West. L. J	Western Law Journal.
Woodb. & M	Woodbury and Minot's Reports.
Woods	Woods' Reports.
Woolw	Woolworth's Circuit Court Reports.

EDITOR'S NOTE.

The act of Congress "To establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, is a departure, and, in some of its provisions, a radical departure from previous statutes upon that subject either in the United States or Great Britain. It is the purpose of this volume to give the text of the present law, and under each section syllabi of such decisions by the Supreme, Circuit and District courts of the United States as will aid in construing it.

The intelligent practitioner will not fail to realize that decisions under a statute should be interpreted in the light of its language; and it is reasonable to request that this guiding principle shall be borne in mind in applying the opinions that are digested in this volume. For the most part, these decisions were rendered under the Act of 1867, and in other cases, the fact is stated or made to appear from the year in which the decision was rendered, which is added to the note. The text of previous laws of the United States on the subject of bankruptcy, and the several acts amendatory thereof, with the dates of their approval, is appended, and will be found of assistance in giving effect to the decisions here summarized.

It will be noted that the officer known as the "register" under the Act of 1867 is now designated as "referee," and that the duties devolved upon the "assignee" by the provisions of that law are to be performed substantially by a "trustee," under the present act.

It has been sought to arrange the notes under the sections to which they respectively apply. This work has been attended with

great difficulty, and any failure to perform it satisfactorily is not to be charged wholly to the editor. For example: Section 3 defines acts of bankruptcy, and of these voluntary preferences form an important part; but that subject is treated in section 60, and again in sections 67 and 70. So actions by trustees to set aside fraudulent transfers are referred to in several sections; and this is true of other provisions. To meet this difficulty, which rendered a perfect classification impossible, cross-references will be found; and an unusually comprehensive index will serve as a further guide.

It will be observed that in repeated instances there is a conflict between the decisions here compiled. It is quite alien to the purpose of this work to weigh, reconcile or distinguish such opinions. The reader will bear in mind that for the most part the rules of equity jurisprudence govern proceedings in bankruptcy, and will apply the principle that in such cases the decision is limited by the particular facts in the case. Nothing is here attempted except a reference to the authority.

It is not to be predicated of any work of this character that it will be free from imperfections; but the conviction is confidently expressed that the opinions of the federal courts on the subject of bankruptcy have been exhaustively collated and accurately digested, and that the work will be of considerable assistance to the bench and bar, and equally to students, in advising them of the established principles of jurisprudence respecting this important subject.

The editor desires to acknowledge the assistance of Hon. Alex. C. Botkin, chairman of the Commission to Revise and Codify the Criminal and Penal Laws of the United States, who rendered such services as his official duties would permit in the preparation and arrangement of the notes.

New York, Dec. 20, 1898.

INTRODUCTORY.

The etymology of the word " bankruptcy " carries us to Florence when it occupied a prominent place among the commercial cities of the world. It was the custom there, when a merchant failed to pay his debts, to break his bench or counter, and to that usage is to be traced the derivation of the word that has come to be attached to systems of legislation that possess no slight importance in the history of the race.

It should be here stated, however, that laws respecting insolvency, or the willful refusal of debtors to discharge their obligations, are older than the word. Such ordinances date back at least to the Draconian code, which was in force six centuries before the Christian era, when Florence was a village of huts on the marshes of the Arno. The Twelve Tables dealt with this subject with characteristic severity, and among other provisions permitted creditors to dismember the body of their debtor.

But " bankruptcy " has a more restricted signification. Its germinal principie is to be found in the *cessio bonorum* of the Roman law during the time of Caesar. Under its more humane provisions, the debtor who surrendered all of his goods to his creditors was relieved of the harsh penalties of the older systems, and, in the course of time, they were further mitigated by discharging him of his obligations. This is the distinguishing feature of modern bankruptcy.

The first English law on this subject was enacted in 1542 during the reign of Henry VIII. It was essentially a penal statute. Debtors who fled the kingdom or concealed themselves were made criminals, and their effects were seized and distributed among their

creditors without extinguishing their obligations. These provisions were applied to all who "craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay, or return to pay, but at their own wills and pleasures consume the substance obtained by credit from other men for their own pleasure and delicate living, against all reason, equity and good conscience."

Under this statute the administration of the estates of bankrupts was devolved immediately upon the Lord Chancellor and other high officers. This tended to fix a principle that it may be profitable to call to the attention of the reader, viz., that jurisdiction under laws respecting bankruptcy was exercised in conformity to the rules of equity. The practice was preserved after the adoption of the first amendment, which occurred in the time of Elizabeth. It made an important change in procedure by authorizing the Lord Chancellor to appoint commissioners who should take possession of the property of the bankrupt and dispose of it for the benefit of creditors.

As we have stated, the Court of Chancery retained its supervisory jurisdiction, and equitable principles still obtained in the administration of estates. But the Statute of Elizabeth effected two departures from the previous law that were of very considerable moment. By the first of these, the law was restricted in its operation to traders; and this feature persisted in the legislation of England until 1861, and was copied in the first bankruptcy act adopted in the United States, and, indeed, in the law of 1841, though in the latter, the meaning of the word was enlarged to include bankers and some other classes.

Again, in the Statute of Elizabeth, we first find the term, "acts of bankruptcy." Certain acts and practices were designated upon the commission of which a debtor could be declared a bankrupt, and such adjudication was fundamental to the authority of the commission to seize his property and distribute it. Various changes

have been made from time to time as to what constitutes sufficient grounds for such a decree, but we have no knowledge of any law in England or this country that does not make some "act of bankruptcy" a prerequisite to the exercise of the jurisdiction in involuntary proceedings.

It would scarcely be of interest to trace the evolution of procedure through the successive laws of England. The next important change in the history of the system was effected by the Statute of Anne in the year 1706. It relieved bankruptcy of the character that had been imposed upon it by previous statutes, that of being a statutory crime, for which the debtor's person, as well as his property could be seized; but it did much more. It provided that when the debtor should have surrendered all of his property to the commission, and complied with all of the requirements of the law, he should receive a certificate of conformity, and that this certificate, upon being confirmed by the Lord Chancellor, should operate as a discharge of his person, and any property that he might subsequently acquire, from all debts owing by him at the time of his bankruptcy.

This humane enactment has been followed in all subsequent legislation on the subject. It recognized that the object of the system is two-fold: (1) To dedicate the property of an insolvent debtor to the ratable payment of his debts; and (2) to grant him a discharge from his existing obligations, to the end that he may be restored to the activities of life, freed from the burdens visited upon him by previous misfortunes in business. It may be justly remarked that there is nothing more to be accomplished by any law on the subject; all other provisions are matters of detail more or less effectively designed to accomplish these ends.

The English act of 1825 was principally a codification of existing laws that were scattered through the statute books of more than three centuries in confusion and chaos.

Rari apparent, nantes in gurgite vasto.

At the same time, it introduced some amendments. These were partly directed to the establishment of more efficient methods for the discovery of assets and the realization of the full value of the bankrupt's estate. A provision was also inserted for the adjustment and proof of contingent and unliquidated claims, which were excluded under previous laws. But the most important of the amendments effected by the act of George IV was the establishment of voluntary bankruptcy. Upon this subject, Mr. Robson, in his "Treatise on the Law of Bankruptcy," says:

> This statute also contained a provision enabling a trader to be accessory to his own bankruptcy, by authorizing a commission to issue at the instance of a creditor upon a declaration of insolvency by the debtor; or, in other words, it authorized a concerted bankruptcy, which had previously been regarded as a fraud on the bankrupt law. The principle of this provision was still further recognized by subsequent statutes, to the extent of allowing a debtor to petition for an adjudication against himself. The policy of allowing a debtor to petition for adjudication against himself has been much canvassed, and was not authorized by the Bankruptcy Act, 1869, although it allowed a declaration of insolvency to be filed by a debtor as the foundation of an adjudication against him on the petition of a creditor; and also proceedings to be instituted by a debtor for the liquidation of his affairs in the same manner as if he had become bankrupt.

In the act of which we are speaking (1825), we find the first introduction of the practice of relieving the estate of bankrupts from the jurisdiction of the courts by compositions. It provided that the commission might be superseded when a specified majority of creditors, in number and amount, signified their willingness to accept a certain percentage of their claims. This law was infirm in accomplishing the end sought, and unjust in its operation in that it did not release the debtor from the claims of dissenting creditors.

The law of 1831 established the Court of Bankruptcy, consisting originally of four judges and six commissioners. The judges were constituted a court of review, and provision was made for an appeal from it to the Lord Chancellor, and a limited appeal from him

to the House of Lords on matters of law and equity. It may be deserving of remark in this connection that our District Court, in the exercise of its jurisdiction in bankruptcy, is a distinct court. It was so decided under the law of 1867, and it does not appear that there is anything in the present act that affects this condition.

We have now witnessed the successive introduction in the laws of England of the essential principles of modern bankruptcy. It can not be desirable for the American reader to follow step by step the subsequent legislation that has mainly been addressed to reforming the procedure. The statute of 1861 was the earliest to repeal the provision which confined the operation of the law to traders. The present law is that originally enacted in 1883, and amended in 1890. It is more severe than some of its predecessors in the conditions upon which a debtor is entitled to receive a discharge.

It would not be practicable, even if it were profitable to consider at length, the legislation of other countries on this subject. The house committee on the judiciary of the Fifty-fourth Congress, in a report of notable value, as the result of exhaustive researches, gave a list of twenty-nine countries that have bankruptcy laws, and this roster included all of the great nations of the earth, and many of the smaller ones, from Germany with a population of fifty millions, to Costa Rica with only two hundred thousand. The report adds:

> The committee did not ascertain whether or not there is a bankruptcy law in Chile, Colombia, Dominican Republic, Hawaii, Japan, Korea, Peru, Syria, Switzerland, or Venezuela.
>
> Aside from China and the United States, and possibly Japan, there are no countries of any considerable importance but what have bankruptcy laws.
>
> In Guadeloupe there is no relief whatever for a bankrupt.
>
> In Siam "there are no bankruptcy laws as we understand them. When a man's assets fall short of his liabilities, he either compounds with his creditors or leaves the country hurriedly. If taken, his own person and those of his family may be held until the debt be paid."
>
> In China "the various foreign nationalities, *except the United States*, have bankruptcy laws which are enforced against their nationals, those of

Germany being very strict, the others perhaps less so. * * * There never was such a law in existence among the Chinese as a bankruptcy law."

"All delinquents [in China] pass into the dishonored class and are soon put under process of coercive termination of a business career, and are subject to punishment by bamboo blows."

"The laws against bankrupts [in China] are theoretically very severe, a failure of $1,500 to $5,000 entailing banishment, and from $5,000 upward summary decapitation. No distinction is made between fraudulent bankruptcy and unavoidable ones."

In Russia "the right to resume depends upon the good will of the creditors. If a compromise is effected, the bankrupt may at once resume, but a dissatisfied creditor, by a monthly payment of $2.25, can keep the bankrupt imprisoned until the debt is paid. Fraudulent bankrupts are punished by banishment to Siberia. There are no relief acts in bankruptcy."

In Liberia "when a person in business fails he must make an assignment of all his property, except one bed, one table, two chairs, cooking utensils, and so much wearing apparel as is privileged from execution, for the benefit of his creditors and * * * make oath that his assignment is true and correct; and must enter into bond, with good sureties, and he can not resume business for three years after the assignment."

When a person fails in Switzerland he loses his civil rights.

Legislation in the United States respecting insolvent debtors has been attended with great difficulty and no slight confusion on account of our peculiar system of States, and the dual sovereignty consequent thereupon. The Constitution conferred upon Congress the power to pass uniform laws on the subject of bankruptcies; but it remained for the courts to determine what effect this provision has upon the authority of State legislatures. In the case of Sturges v. Crowinshield (4 Wheaton, 122), the right of a State to pass a bankrupt law was considered, and this has since been recognized as the leading authority on the question.

In 1811, the State of New York had passed a law "for the benefit of insolvent debtors and their creditors," which provided for the discharge of the debt upon a surrender by the debtor of his property; and it was contended that this was in effect a bankrupt law, and as such was not within the legislative power of the state under the federal Constitution. Chief Justice Marshall, delivering the opin-

ion of the court, pointed out the close relation between bankrupt laws and insolvent laws, and the difficulty of defining the distinguishing characteristics of each. He held, however, that the difference was not material, and that the states had, in the absence of legislation by Congress, the power to enact bankruptcy laws.

This proposition has ever since been followed. Insolvency laws, varying widely in their provisions, have found places on the statute books of most of the states. So long as there is in force no act of Congress on bankruptcy, these laws are allowed full effect, except, of course, that they can have no efficacy as to creditors outside the jurisdiction of the states in which they are respectively enacted. When, however, Congress passes a bankrupt act, its effect is to suspend the operation of state laws that conflict therewith, or tend to withdraw the administration of the estates of bankrupts from the federal courts. In other words, the power of Congress over the subject, when exercised, is supreme and exclusive.

The first law of Congress under the authority conferred by the Constitution was passed in 1800. It represents the exact stage that the legislation of the English Parliament on the subject had reached at the date of its passage; that is, between the Statute of Anne and the Statute of George IV. It provided only for involuntary proceedings, as it was twenty-four years later that the law was amended in England so as to permit a debtor to be adjudged a bankrupt on his own petition. Again, it was limited in its operation to traders.

It may be deserving of remark in passing that the question was once mooted whether it was competent for Congress to legislate upon the bankruptcy of others than traders. It was contended in behalf of the negative of this question that such a limitation existed in the laws of England when the Constitution was adopted, and that it attached to the power vested in Congress. Mr. Hotchkiss, in his valuable article on "Bankruptcy Laws, Past and Present," mentions that in 1817, Judge Livingston expressed a doubt on this subject. Later, however, the doubt was solved by conclusive decisions

to the effect that the authority of Congress over bankruptcies empowered it to pass laws applicable to all classes of persons that it should choose to embrace within their provisions.

The law of 1800 was in operation only a little over two years, being repealed in 1803. It was thirty-eight years later that the next act was passed. The panic of 1837 had filled the country with commercial wrecks, and there was a strong sentiment, which operated slowly, but at length effectively upon Congress in favor of legislation for the relief of debtors. The result was the statute of 1841. It was limited to traders, but, as already stated, the word was made to include bankers, brokers, factors, underwriters and marine insurers. It also introduced the principle of voluntary bankruptcies, which had been established in England by the law of 1825.

The statute of 1841 was repealed by the same Congress that passed it. Whatever its effect may have been in accomplishing the objects for which it was designed, it served the useful purpose of eliciting from the bench opinions of great value in fixing the fundamental principles of bankruptcy jurisprudence. Thereafter for a quarter of a century, unfortunate debtors were left to such relief as the insolvency laws of the states could afford them, and these came to be the agencies of monstrous frauds, aside from the infirmities and inequalities that were inseparably incident to their limited operation.

It required another financial crisis to stimulate Congress to action. This occurred in 1866, and a year later there was enacted the only bankrupt act that has remained in force for any considerable period. It was little else than a copy of the insolvency law of Massachusetts, which had been on the statute books of that state for thirty years, a fact that greatly served to ripen its provisions and proceedings. Nevertheless the act of 1867 was subjected to repeated amendments, which were codified, with radical changes, in 1874. As thus re-enacted it will be found in the Revised Stat-

utes of 1878, though many of its sections are there dismembered, in the interest, supposably, of a more orderly arrangement of its provisions.

A schedule of the titles of these acts and the dates of their approval, is here given:

"An act to establish a uniform system of bankruptcy throughout the United States." Approved March 2, 1867. 14 Stat. L. 517.

"An act in amendment of an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1867.'" Approved July 27, 1868. 15 Stat. L. 227.

"An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved March 2, 1867." Approved June 30, 1870. 16 Stat. L. 173.

"An act in amendment of the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States.'" Approved July 14, 1870. 16 Stat. L. 276.

"An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States.'" Approved June 8, 1872. 17 Stat. L. 334.

"An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1887.'" Approved February 13, 1873. 17 Stat. L. 436.

"An act to declare the true intent and meaning of the act approved June 8, 1872, amendatory of the general bankrupt law." Approved March 3, 1873. 17 Stat. L. 577.

"An act to amend and supplement an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved March 2, 1867, and for other purposes." Approved June 22, 1874. 18 Stat. L. 178.

"An act to correct errors and supply omissions in the Revised Statutes of the United States." Approved February 18, 1875. 18 Stat. L. 320.

"An act concerning cases in bankruptcy commenced in the Supreme Courts of the several territories prior to the 22d day of June, 1874, and now undetermined therein." Approved April 14, 1876. 19 Stat. L. 33.

"An act to perfect the revision of the Statutes of the United States, and of the statutes relating to the District of Columbia." Approved February 27, 1877. 19 Stat. L. 252.

"An act to repeal the bankrupt law." Approved June 7, 1878. 20 Stat. L. 99.

The law of 1867, as the several acts are called that were built up on the statute enacted in that year, was very voluminous and comprehensive. It defined at great length what should be deemed to constitute acts of bankruptcy, and included among them defaults in the payment of commercial paper for a certain period. The granting of discharges was guarded with severe conditions, and in operation many debtors, after surrendering their property for the benefit of their creditors, were denied a release from their obligations. While this doubtless aided in the prevention of frauds, it can not have failed to work harshly in many instances.

The main sources of complaint, however, were not addressed to the features just mentioned. The first was that the execution of the law was often attended with the most serious and disastrous delays. The administration of estates was, in some cases, protracted over a term of years, greatly to the disadvantage of creditors as a matter of course, and equally to the annoyance of the debtor when he was thereby prevented from securing his discharge. It is scarcely profitable to inquire at this time whether this was due to the law itself, or to the delinquencies of those to whom its administration was intrusted.

Another grievance was the excessive fees and expenses of administration. An examination of the schedule of allowances to officers will scarcely convey the impression that they were disproportionate to the services; but it is quite conceivable that they were often mul-

tiplied to an outrageous extent. The payment of attorneys' fees from the fund to be distributed rested in the discretion of the court; and it is reasonable to believe that judges are not so far removed from the infirmities common to humanity but that there were numerous instances of favoritism to the serious prejudice of the rights of creditors. At the same time, there is presumably good reason for the remark of Judge Dillon, quoted elsewhere in this volume, that creditors were themselves often chiefly to blame, in their lack of vigilance and activity, for the extortionate expenses of administering estates.

The law of 1867 was repealed by an act that took effect on the 1st of September, 1878. It was not many years later before an agitation commenced for another bankruptcy act; but it made slow progress in exciting any popular sentiment in that behalf. Mr. Jay L. Torrey, of the St. Louis bar, was employed by certain commercial bodies to frame a law, and he bestowed very diligent and intelligent labors upon the performance of that duty. The bill which he drafted was introduced in several successive Congresses, but always to encounter opposition of the most formidable character.

While the bill was drawn with creditable precision, and may be justly called a scientific system of bankruptcy, it was regarded by many as manifesting more consideration for creditors than debtors. This view operated effectively on the fears of many Congressmen, and there was little prospect that it could secure favorable action. At all events, while it elicited debate of considerable interest, it made slight progress toward a place upon the statute books. Again a panic interposed, and the distresses that followed proved an influence of great power in affecting public sentiment.

At the extra session of the Fifty-fifth Congress, on the 22d of March, 1897, Senator Lindsay, of Kentucky, introduced the Torrey bill, and it was referred to the committee on the judiciary. On the following day, the committee reported it back to the Senate,

and its consideration commenced. It was debated from time to time until the 22d of April. On that day, an amendment in the nature of a substitute was offered by Senator Nelson, of Minnesota, and was agreed to by a vote of 34 to 22. The bill as thus amended thereupon passed the Senate with only eight votes in the negative.

The Nelson substitute provided for voluntary bankruptcy to all petitioning debtors, except corporations, owing debts to the amount of $200, and for involuntary bankruptcy in proceedings against bankers, brokers, merchants, traders and manufacturers owing debts to the amount of $500, corporations being here also expressly excepted. It limited acts of bankruptcy to two, viz., fraudulent transfers and voluntary preferences while insolvent, whereas the Torrey bill enumerated no less than nine. All the provisions of the latter that had provoked criticism for their supposed severity to debtors were carefully eliminated.

On April 23, 1897, the bill as passed by the Senate was sent to the House of Representatives and referred to the committee on the judiciary, where it remained without action until the second session of the Fifty-fifth Congress. On December 6, 1897, Hon. D. B. Henderson, of Iowa, chairman of the committee on the judiciary, introduced the Torrey bill in the House, and it was referred to the same committee. Ten days later a majority of the committee reported the Senate bill with a recommendation that all after the enacting clause be stricken out, and that the Torrey bill, with amendments, be substituted. Four members of the committee presented a minority report adverse to the substitution.

The proposed amendments to the Torrey bill were eighty-three in number, and some of them of a very radical character. The suspension of the payment of commercial paper for thirty days, as an act of bankruptcy, was stricken out. The provision was inserted requiring petitioning creditors in involuntary proceedings to give a bond for the protection of the alleged bankrupt as to costs and dam-

ages occasioned by the wrongful institution of such proceedings. More liberal provisions were inserted respecting arrests, discharges, offenses and liens, and some reduction of the fees of officers was also made.

The debate proceeded until February 19, 1898. Then Mr. Underwood, of Alabama, moved to strike out the involuntary features of the bill, so as to confine its operation to the adjudication of debtors upon their own petitions. The amendment was defeated by a majority of 18, and the Henderson bill was thereupon agreed to, yeas 153, nays 114. Mr. Terry, of Arkansas, moved to recommit, with instructions to the committee to report amendments striking out the involuntary provisions and limiting the operation of the act to a period of two years from its passage. The motion was lost, and the bill, as amended, passed the House by a vote of 159 to 125. The record shows that the opposition came almost exclusively from the West and South.

What may be called for convenience the Henderson bill was sent to the Senate, and on March 3, 1898, was disagreed to by that body and a conference requested. Senators Hoar, Nelson and Lindsay were appointed conferees on the part of the Senate, and Messrs. Henderson, Ray and Terry, on the part of the House. On June 15, 1898, the conference committee, Mr. Terry dissenting, reported the bill with amendments of considerable importance. This report was agreed to on June 24th by the Senate by a vote of 43 yeas and 13 nays, and on June 28th by the House, yeas 134, nays 53. The bill was approved by the President on the 1st of July, 1898.

It is not deemed desirable to enter upon an analysis of the act; but it may not be out of place to call attention to a few of its features. The basis of bankruptcy may be said to be insolvency. In the course of some hundreds of years the courts have settled the meaning of that word to be the condition of a debtor who is unable to pay his debts as they mature. The new law sacrifices this definition and expressly enacts a new one, namely: "A person

shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, converted, or removed, with intent to defraud, hinder, or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts." It is to be feared that this definition may afford further work for the courts.

The acts of bankruptcy, as divided and numbered in the law itself, are five, but they are in fact reducible to three, viz.: fraudulent transfers, voluntary preferences (by the conveyance of property or suffering legal proceedings), and a general assignment for the benefit of creditors. It is also made an act of bankruptcy for a person to have "admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground;" but that contemplates only the institution of voluntary proceedings by the debtor himself. The act of 1867 specified ten acts of bankruptcy, and the law of 1841, five.

The provisions respecting voluntary bankruptcy are limited to natural persons, and corporations are expressly excluded from their benefit. Involuntary proceedings are confined to corporations "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits." This may be supposed to have been intended to exclude railroad companies; but it may be questioned to which of these classes mining companies, for example, can be referred. Farmers and wage-earners are expressly excepted from persons who are subject to adjudication as bankrupts on the petition of their creditors.

A notable feature of the present law is the jealousy with which it guards the jurisdiction of state courts. Under the act of 1867 it was finally determined that assignees in bankruptcy, by reason of their official or representative character, could maintain actions in courts of the United States to recover property belonging to the estate, though it should be added that this conclusion was not reached without some conflicts of opinion on the part of the federal

judiciary. The second paragraph of section 23 of the act of 1898 provides that such suits can only be brought in the courts in which the bankrupt might have brought them.

It follows that in the absence of the conditions upon which the jurisdiction of federal courts vests, such as diversity of residence, the trustee is relegated to the courts of the states. It will be of interest to observe whether any evils will result from this provision. It is clearly impossible for Congress to impose jurisdiction upon tribunals constituted by the authority of the states. If — though it is not to be presumed that the danger is considerable — a state court should refuse to entertain an action brought by a trustee in bankruptcy, he would be left without a forum and emasculated of means to collect the assets of his bankrupt.

We disclaim any purpose in the above to criticise the law or to predict any failure to realize its useful and beneficent purposes. Our conclusions can be expressed in the language of Mr. Hotchkiss in the article previously mentioned:

> Such is the latest product of bankruptcy legislation, genealogically examined. Starting with the Torrey bill, notable for its too harsh provisions, proceeding through the Nelson bill, as inadequate in procedure as it was lacking in a broad grasp of the dangers to commercial morality, which had to be avoided, and finally developing into a compromise between the latter and the Henderson substitute, a measure which seemed to find the golden mean, it goes on the books as a law for temporary relief, not for permanent control. Many assert that this is as it should be. The crying need for its passage was that the unfortunates, who have been in bondage to debts and judgments born of the late period of depression might be free again; and the country will quickly feel the effects of the restored energy of the tens of thousands who have gone down in recent wrecks. So far the law is expressive not only of our humanity, but of our commercial common sense.

THE BANKRUPTCY LAW.

CHAPTER I.

DEFINITIONS.

SECTION 1. Meaning of Words and Phrases.— (a.) The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(1.) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition;

(2.) "Adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed;

(3.) "Appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States;

(4.) "Bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

(5.) "Clerk" shall mean the clerk of a court of bankruptcy;

(6.) "Corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association;

(7.) "Court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee;

(8.) "Courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska;

(9.) "Creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

(10.) "Date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed;

(11.) "Debt" shall include any debt, demand, or claim provable in bankruptcy;

(12.) "Discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act;

(13.) "Document" shall include any book, deed, or instrument in writing;

(14.) "Holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving;

(15.) A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts;

(16.) "Judge" shall mean a judge of a court of bankruptcy, not including the referee;

(17.) "Oath" shall include affirmation;

(18.) "Officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer;

(19.) "Persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations;

(20.) "Petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named;

(21.) " Referee " shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead;

(22.) " Conceal " shall include secrete, falsify, and mutilate;

(23.) " Secured creditor " shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets;

(24.) " States " shall include the Territories, the Indian Territory, Alaska, and the District of Columbia;

(25.) " Transfer " shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security;

(26.) " Trustee " shall include all of the trustees of an estate;

(27.) " Wage-earner " shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year;

(28.) Words importing the masculine gender may be applied to and include corporations, partnerships, and women;

(29.) Words importing the plural number may be applied to and mean only a single person or thing;

(30.) Words importing the singular number may be applied to and mean several persons or things.

(15) Judge Baldwin of the district court of Nevada charged a jury under the act of 1867, as follows: " If you believe from the evidence that W.'s property, if sold on that day " (the day when the alleged act of bankruptcy was committed), " would not have produced enough to pay his debts, then I charge you as a matter of law, that he was insolvent within the meaning of the Bankrupt Act." In re Wells, 3 N. B. R. 371; 29 Fed. Cas. 637.

Assets, in the meaning of the Bankrupt Act of 1867, are proceeds of the bankrupt's property which come into the hands of the assignee and are applicable to the payment of the bankrupt's debts. In re Wilson, 2 Hughes, 228; 30 Fed. Cas. 97 (1875).

The term " persons interested " in the Act of 1841 was held to mean those who have a direct interest in the matter immediately in controversy, and not merely a remote and contingent interest. Dutton et al. v. Freeman, 5 Law Rep. 447; 8 Fed. Cas. 175 (1842).

CHAPTER II.

CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

§ 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to

(1.) Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions;

(2.) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(3.) Appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified;

(4.) Arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5.) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates;

(6.) Bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy;

(7.) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided;

(8.) Close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered;

(9.) Confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases;

(10.) Consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees;

(11.) Determine all claims of bankrupts to their exemptions;

(12.) Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

(13.) Enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14.) Extradite bankrupts from their respective districts to other districts;

(15.) Make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act;

(16.) Punish persons for contempt committed before referees;

(17.) Pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them;

(18.) Tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and

(19.) Transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

Residence and Place of Business.

To justify a petitioner in commencing proceedings in a district other than that in which he resided, under the Act of 1841, it was necessary that he should have a fixed and notorious employment in such district. In re Kinsman, 1 N. Y. Leg. Obs. 309; 14 Fed. Cas. 643 (1843).

A debtor must reside within the United States to give the court jurisdiction of voluntary or involuntary proceedings in bankruptcy. In re Burton et al., 6 Ben. 324; 4 Fed. Cas. 863.

The bankrupt had carried on business in New York for two months prior to the proceedings, and for the same two months in Massachusetts. It was held that the district court of New York had jurisdiction of his petition. In re Foster, 3 Ben. 386; 9 Fed. Cas. 521.

Residence in different states is not necessary to give jurisdiction to a court of bankruptcy over a suit by the assignee, even though the defendant is not a party to the proceedings in bankruptcy. Atkinson v. Purdy, Crabbe, 551; 2 Fed. Cas. 112 (1844).

A petition is properly filed in the district where the bankrupt had been carrying on business for six months previous, notwithstanding it was not his place of residence. In re Bailey, 2 Ben. 437; 2 Fed. Cas. 392.

A petitioner in New York failed to allege residence in his petition, and it appeared on the examination that he lived with his father in New Jersey, and kept books for a firm in New York City. The register refused an adjudication for the want of jurisdiction, and his action was approved by the court. In re Magie, 2 Ben. 369; 16 Fed. Cas. 406.

The petition showed on its face that the bankrupt resided out of the district. Nearly a year afterward, the petitioner sought to have the petition amended so as to show that the alleged bankrupt in fact resided within the district. The application was denied. In re Freudenfels, 9 Fed. Cas. 810.

The bankrupts appeared in involuntary proceedings, and a decree of adjudication was entered with their consent. Subsequently, a creditor who had not joined in the petition moved to dismiss the proceedings, and in that behalf showed that the bankrupts had never resided or carried on business in the state where the proceedings were commenced. It was held that the court was without jurisdiction, and that the proceedings must be vacated. Fogarty v. Garrity, 1 Saw. 233; 9 Fed. Cas. 330.

A debtor against whom involuntary proceedings were commenced on the 21st of January, 1868, had not carried on business anywhere during the six months previous. From May 1, 1867, to December 7 of the same year, he resided in Boston, and from that time until the commencement of proceedings, at New York. The proceedings were commenced in New York, and an adjudication had by default; but the question of residence having been raised upon the discharge, it was held that the court had no jurisdiction. In re Leighton, 4 Ben. 457; 15 Fed. Cas. 265.

The bankrupt had resided in New Jersey for more than six months before the filing of his petition, but had a desk in New York where he kept his books and papers, and was engaged in closing up the affairs of a former partnership of which he had been a member. He was not engaged in any other business. The district court for the southern district of New York held that it had no jurisdiction over his petition. In re Little, 3 Ben. 25; 15 Fed. Cas. 599.

A railroad company was chartered both in Massachusetts and Connecticut. Proceedings in bankruptcy were commenced in the former state and

an adjudication entered. After the filing of the petition, but before the adjudication, another creditor commenced proceedings in Connecticut. The petitioner in the proceedings in Massachusetts made an application to the district court in Connecticut asking leave to appear and defend against the petition in that state. The district court denied the application, but the circuit court decided that it should have been entertained, and that whether the company was to be regarded as one corporation or two corporations, the court in Massachusetts should have been allowed to exercise the jurisdiction which it had acquired. In re Boston H. & E. R. Co., 9 Blatchf. 101, 409; 3 Fed. Cas. 951.

A merchant, who had resided and done business in New York for twenty years, failed, and thereupon sold his residence in New York and removed with his family to New Jersey. Two years later, during which time he had been engaged as a clerk in New York, he filed his petition in bankruptcy in the southern district of New York. It was held under the Act of 1867 that the petition was properly filed in that district. In re Belcher, 2 Ben. 468; 3 Fed. Cas. 79.

A creditor residing in one state proved his debt in proceedings in bankruptcy in another state. Thereafter he was ordered to appear before the register to be examined respecting his claim, which he failed to do. Held, that he was subject to the jurisdiction of the court by reason of his having proved his claim without respect to his residence; but that if he could not attend personally without hardship, the court would order his examination before a register at his place of residence. In re Kyler, 2 Ben. 414; 14 Fed. Cas. 887.

A debtor who was born in Boston, and had lived there the greater part of his life, was domiciled for some time in California; then went abroad for eleven months, and thereafter returned to Boston. Within two months after his return, he filed a petition in bankruptcy in the district of Massachusetts. The court held that his residence in that state was resumed in a legal sense when he left California without intending to return, and for the purpose of resuming his residence at Boston. In re Walker, 1 Low. 237; 29 Fed. Cas. 1.

W. removed to Montana with a stock of goods, leaving his family at St. Louis. He remained in Montana for ten months with the exception of a business trip to his former home, and then returned to St. Louis. Two months later, a petition in bankruptcy was filed against him in the eastern district of Missouri. The court held that Montana was his place of residence during the six months preceding the filing of the petition. In re Watson, 4 N. B. R. 613; 29 Fed. Cas. 422.

An assignee in bankruptcy can only recover property by a proceeding in another district by a plenary suit, and the defendant must be an inhabitant of, or to be found in the latter district, at the time of serving the writ, to give the district court jurisdiction. Shainwald v. Lewis, 5 Fed. Rep. 510.

A debtor residing in Massachusetts was arrested for debt in New Brunswick. He gave bail, and later surrendered himself and was im-

prisoned. Later, he filed his petition in bankruptcy in Massachusetts, and thereafter was charged in execution under the proceedings in New Brunswick. Judge Lowell held that this was not an arrest "during the pendency of the proceedings in bankruptcy" under the Act of 1867, as the charge in execution related back to the surrender; also that as both the debtor and the creditor were residents of Massachusetts, the court of bankruptcy might enjoin the creditor from proceeding in the arrest. Hazleton v. Valentine, 1 Low. 270; 11 Fed. Cas. 942.

A conflict between rival claims to funds in the hands of the assignee in bankruptcy was held to be determinable in a suit in the district court, although both claimants were residents of the same state, the suit being considered as auxiliary to the original proceedings in bankruptcy, and, therefore, within the jurisdiction of the court. In re Sabin, 18 N. B. R. 154; 21 Fed. Cas. 120 (1878).

Residence, etc., of Partnerships.

Under the Act of 1841 petitions could be filed in the district where the bankrupt resided, or in that in which he had his place of business. Any member of a firm could commence proceedings in the district of his residence, or where the firm carried on its business; but the court that first acquired jurisdiction had exclusive jurisdiction over all the partners and their property, joint and separate. Ex parte Hall, 5 Law Rep. 269; 11 Fed. Cas. 196 (1842).

An adjudication in bankruptcy was entered against a firm on the petition of one partner. The other partners resided outside of the district, and had no place of business within it. The court vacated the adjudication for want of jurisdiction, except as to the petitioning partner. In re Martin, 6 Ben. 20; 16 Fed. Cas. 875.

In proceedings of involuntary bankruptcy against a firm, the petition set up that the three partners had resided in the district for the previous six months. On the application for a discharge, it was shown in opposition that one of them had not resided in the district for that period. Held, that the court could not grant a discharge to any of them. In re Beal, 9 Ben. 223; 2 Fed. Cas. 1119.

The petitioners were copartners, and at the time the debts were contracted were doing business in the state of New York, but one of them resided in the eastern district of New York, and was not engaged in business when the petition was filed. The petition was filed in the southern district of New York. Held, that the partner residing in the eastern district of New York must file his petition in that district. In re Pritchard et al., 1 N. B. R. 297; 19 Fed. Cas. 1242.

A petition in involuntary bankruptcy against a firm was filed in the southern district of Ohio. It appeared that while one of the partners lived in that district, the only place of business of the firm was in Michigan. Held, that the petition could only be filed in the latter district. Cameron v. Canico, 9 N. B. R. 527; 4 Fed. Cas. 1128.

Where one of two partners resided in the United States and the other in Canada, it was held that the court could adjudge the former a bankrupt, but not the latter. In re Burton et al., 9 Ben. 324; 4 Fed. Cas. 863.

The court entertained jurisdiction of a petition in bankruptcy by one member of the firm who resided in the district, when the other members, who resided in another district, refused to unite after being requested, and when it appeared that the copartnership assets had come into the hands of the assignee. In re Penn et al., 5 Ben. 89; 19 Fed. Cas. 151.

Where two partners resided in different states, and each had filed a petition in bankruptcy in his own state, Judge Lowell ordered the proceedings to be stayed in the case in which the second petition was filed. In re Smith, 1 N. B. R. 214; 22 Fed. Cas. 397.

The court that first acquires jurisdiction of an estate in bankruptcy has exclusive jurisdiction, and other members of the same copartnership cannot institute proceedings in another court. In re Greenfield, 5 Ben. 552; 10 Fed. Cas. 1162.

Three partners resided in the southern district of New York and conducted business there. Two of them, as another firm, also carried on business in the northern district of New York. The former firm was adjudged bankrupts, and the assignee took possession of all their estate. Two weeks later a petition was filed against the other firm in the northern district. Held, that the latter firm was dissolved by the adjudication of the former; that its firm indebtedness would be discharged by the proceedings in the first case; that its creditors would be entitled to a preference over other creditors so far as the firm assets would pay the same, which would be recognized by the proceedings in the southern district; that creditors of the latter firm could not vote for assignee in the previous case, but might oppose the confirmation, or apply for his removal, and that the proceedings in the latter case should be stayed, while the proceedings in the southern district were pending. In re Leland et al., 5 Ben. 168; 15 Fed. Cas. 275.

[See notes to § 5.]

Jurisdiction over Corporations.

The court of bankruptcy may make an order upon subscribers to the stock of a bankrupt corporation without notice of the proceeding. Sanger v. Upton, 91 U. S. 56; Turnbull v. Payson, 95 id. 418.

The court of bankruptcy made an assessment upon the unpaid subscriptions to the stock of the bankrupt corporation. It was held that its action was conclusive, and not subject to collateral attack. Michener v. Payson, 13 N. B. R. 49; 17 Fed. Cas. 259.

The court of bankruptcy is vested with all the powers of the officers and stockholders of a bankrupt corporation in making assessments or calls for unpaid subscriptions to stock. Upton v. Hansbrough, 3 Biss. 417; 28 Fed. Cas. 839.

The court of bankruptcy can make an assessment upon the stockholders of a bankrupt corporation for unpaid stock, and such assessments should be enforced in actions by the assignee. The action of the court is not

subject to collateral attack in the suits to enforce the collection of such assessments. Payson v. Stoever, 2 Dill. 427; 19 Fed. Cas. 27.

The court of bankruptcy has the powers of a court of equity to make an assessment against the stockholders of an insolvent insurance company, to return unearned premiums, and to equalize payments between stockholders where some have paid more than their just proportion; and may in proper cases allow interest on claims. In re Rep. Ins. Co., 3 Biss. 452; 20 Fed. Cas. 544.

A court of bankruptcy does not lose its jurisdiction over a corporation by reason of the fact that the state has an interest in its property as a guarantor of its bonds. In re Greenville & C. R. Co., 5 Chi. Leg. News. 124; 10 Fed. Cas. 1180.

An action was brought by an assignee in bankruptcy to collect unpaid subscriptions from the stockholders of a bankrupt corporation. Held, that the question whether the call was for more than was necessary to pay the debts of the company could not be tried in such an action; neither was it competent to show that the agents and officers of the company had represented to their holders at the time of the purchase that the stock was nonassessable. Upton v. Hansbrough, 3 Biss. 417; 28 Fed. Cas. 839.

The power of the United States district court in bankruptcy to wind up insolvent corporations was held not to be exclusive under the Act of 1867. Chandler v. Siddle, 3 Dill. 477; 5 Fed. Cas. 459.

The adjudication of a corporation in bankruptcy terminates the jurisdiction of state courts under laws authorizing them to wind up its affairs. The court further held that there is no question of comity in such case, but only one of jurisdiction. Watson v. Citizens' Savings Bank, 2 Hughes, 200; 29 Fed. Cas. 427.

Proceedings had been commenced under the laws of Louisiana to wind up the affairs of an insolvent bank. Later, creditors of the bank filed a petition in bankruptcy. It was held that the state law was superseded by the Bankrupt Act, and that the jurisdiction of the state court terminated with its decree declaring the forfeiture of its charter. Thornhill et al. v. Bank of Louisiana, 3 N. B. R. 435; 23 Fed. Cas. 1135; s. c., 1 Wood, 1; 23 Fed. Cas. 1139.

A court of bankruptcy will not compel a receiver of a joint-stock bank, appointed by a state court under the laws of the state, to deliver the assets of the bank to an assignee in bankruptcy. Goodrich et al. v. Remington, 6 Blatchf. 515; 10 Fed. Cas. 611.

Where parties were induced to purchase the stock of a corporation through fraud and misrepresentation, they cannot repudiate the contract in defense of an action for unpaid subscriptions after paying assessments and participating in meetings of stockholders until the company became insolvent. Upton v. Jackson, 1 Flipp. 413; 28 Fed. Cas. 844.

A state court issued an order dissolving a corporation, without jurisdiction. Subsequently, the corporation filed a voluntary petition in bankruptcy, and an adjudication was had. It was held that this would not be set aside on the ground of a prior order of the state court; and it was

further decided that there is no presumption of jurisdiction in a state court respecting proceedings for the voluntary dissolution of corporations under the laws of the state. In re Pensacola Lumber Co., 8 Ben. 171; 19 Fed. Cas. 197.

When proceedings in bankruptcy against a railroad company were commenced the railroad was in the hands of receivers appointed by state courts. The district court refused to interfere with their possession. Alden v. H. & E. R. Co., 5 N. B. R. 230; 1 Fed. Cas. 328.

A court of bankruptcy has jurisdiction to enjoin proceedings to wind up a savings bank under the laws of the state, notwithstanding they were commenced prior to the filing of the petition. In re Citizens' S. Bank, 9 N. B. R. 152; 5 Fed. Cas. 738.

A receiver for an insolvent corporation had been appointed under the laws of the state. Subsequently, a petition in bankruptcy was filed, and an order to show cause was served on the managing officer of the corporation. On the following day, the state court entered a judgment dissolving the corporation. About a week later an adjudication was had in the bankruptcy proceedings. It was held that the court had jurisdiction to make the adjudication. Platt v. Archer, 9 Blatchf. 559; 19 Fed. Cas. 822.

[See notes to §§ 4 and 47.]

Appointment of Receivers.

A court will appoint a receiver of mortgaged premises of the bankrupt alleged to have been fraudulently conveyed, notwithstanding the bankrupt has relinquished possession. McLean v. LaFayette Bank et al., 3 McLean, 503; 16 Fed. Cas. 262 (1845).

Where attorneys for the opposite parties are present in court, a receiver may be appointed without notice. Id.

An injunction may be granted forbidding parties to collect rents from real estate in which the bankrupts have a legal or equitable interest, and a receiver appointed to collect and account for such rents. Keenan v. Shannan et al., 9 N. B. R. 441; 14 Fed. Cas. 177.

A court will not appoint a receiver of mortgaged property of the bankrupt after the appointment of an assignee. In re Bennett, 2 Hughes, 156; 3 Fed. Cas. 206.

After adjudication, and before the election of an assignee, a receiver may be appointed for the temporary custody of the estate; but such a receiver cannot maintain an action to recover property transferred by the bankrupt in fraud of the law, nor can the assignee be substituted and permitted to prosecute a suit so begun. Lansing v. Manton, 14 N. B. R. 127; 14 Fed. Cas. 1129.

A receiver was appointed in bankruptcy proceedings to take possession of certain property. Instead, he took possession of other property which never belonged to the bankrupt. The owner brought a suit against the receiver for trespass, and another in replevin against his custodian. In the latter suit, the defendant appeared and judgment was rendered against him. In proceedings to punish the owner of the property for contempt, the court held that after the custodian had appeared in the

state court it was too late to complain that the suit was in contempt of the authority of the court of bankruptcy; also, that the receiver was not sued in his official capacity, but as an individual, and that he was not entitled to the protection of the court of bankruptcy. In re Young, 7 Fed. Rep. 855.

On a bill to set aside a voluntary assignment made by the bankrupt, the assignee having been enjoined from interfering with the property in question, the appointment of a receiver by the bankruptcy court is not only proper, but necessary. Sedgwick v. Place, 3 Ben. 360; 3 N. B. R. 139; 21 Fed. Cas. 986 (1869).

Where a voluntary assignment had been made, and afterward the assignors became bankrupts, a special receiver having been appointed, it was held that the assets collected should be distributed directly by the receiver, and not through the assignee in bankruptcy. Sedgwick v. Place, 3 N. B. R. 302; 21 Fed. Cas. 999 (1869).

Injunctions and Chancery Jurisdiction.

The Act of 1841 gave the district court of the United States the jurisdiction of courts of equity as to matters arising in bankruptcy. Ex parte Foster, 2 Story, 131; 9 Fed. Cas. 508 (1842).

The bankrupt law clothes the district courts, sitting as courts of bankruptcy, with all the powers of courts of equity. Ex parte Norwood, 3 Biss. 504; 18 Fed. Cas. 452 (1873).

A court of bankruptcy can exercise the same power over judgment creditors that a state court of equity could exercise over such creditors if the debtor were not a bankrupt. Fowler v. Dillon et al., 1 Hughes, 232; 9 Fed. Cas. 616.

The provision of the Judiciary Act of 1793 which forbids federal courts to grant injunctions without notice to the adverse party was held not to apply to proceedings in the district court under the Bankrupt Act of 1867. Ex parte Donaldson, 1 N. B. R. 181; 7 Fed. Cas. 881.

Under the Act of 1841, Judge Story held that in the exercise of its general chancery jurisdiction, the district court could grant an injunction without notice in bankruptcy proceedings. Ex parte Carlton, 5 Law Rep. 120; 5 Fed. Cas. 86 (1842).

An injunction restraining certain creditors from interfering with the property of the bankrupts was made on petition. On proceedings for contempt, the court held that it had jurisdiction to issue the injunction in the manner employed. In re Ulrich et al., 6 Ben. 483; 24 Fed. Cas. 511.

A court of bankruptcy will not interfere by injunction to prevent parties from ascertaining claims to property of the bankrupt which has been sold in the course of proceedings. Adams v. Crittenden, 17 Fed. Rep. 42.

The bankruptcy court on the application of the assignee will enjoin the prosecution of a suit against him commenced without leave of that court. Lloyd v. Ball, 77 Fed. Rep. 365.

A motion will not be entertained to punish a party for contempt in violating an injunction granted under section 40 of the Act of 1867, after adjudication. In re Moses, 6 N. B. R. 181; 17 Fed. Cas. 889.

In granting an injunction against third parties on a petition in involuntary bankruptcy, the court said that it could only remain in force until adjudication, and that a separate bill for an injunction must then be filed. In re Kintzing, 3 N. B. R. 217; 14 Fed. Cas. 644.

Injunction will be granted to restrain the disposition of property by an individual assignee of a bankrupt only in case of actual, imminent danger to bankrupt's property, and not as a mere preventive against possible waste or misappropriation. Ex parte Nightingale, 1 N. Y. Leg. Obs. 8; 18 Fed. Cas. 238.

The petitioning creditor set forth a conspiracy to embezzle the estate of the bankrupt. The court granted an injunction before adjudication, but required security to be given to cover all possible losses in case the creditor failed to establish good cause for the proceeding. In re Smith, 1 N. Y. Leg. Obs. 249; 22 Fed. Cas. 411 (1843).

Judge Deady decided that under section 1 of the Act of 1867 the district courts had equity jurisdiction over all things to be done by virtue of bankruptcy, and that it was not necessary to resort to plenary suits, as they might proceed on petition; further, that the Act of March 2, 1793, requiring notice, did not apply to applications for injunctions in bankruptcy proceedings. In re Wallace, Deady, 433; 29 Fed. Cas. 65.

The bankruptcy court has jurisdiction of a suit in equity to establish a trust in funds of the bankrupt's estate fraudulently appropriated; and objections to the bill will not be sustained because the fraudulent assignee of the funds is not made a party. Shainwald v. Davids, 69 Fed. Rep. 687.

The district court, as a court of bankruptcy, is clothed with all the powers of a court of equity, and if, after adjudication, the bankrupt refuses to account for his assets or surrender his property when ordered so to do by the court, he may be committed for contempt. The power to punish for contempts, however, should be sparingly exercised, and only in cases where there can be no doubt of its propriety. In re Salkey, 11 N. B. R. 423; 21 Fed. Cas. 235 (1875); 11 N. B. R. 516; 21 Fed. Cas. 239 (1875).

Upon a petition in involuntary bankruptcy an injunction was issued against M., to whom it was claimed that property of the debtors had been fraudulently conveyed, restraining him from making any transfer or disposition of the goods so conveyed. Subsequently he was charged with contempt in violating this order. The court refused to take any action upon the contempt proceedings until the proper issues were made up by a suit at law or bill in equity against M. Creditors v. Cozzens et al., 3 N. B. R. 281; 6 Fed. Cas. 793.

Until an assignee is appointed, a petition for an injunction against the sale of real estate can only be filed by the bankrupt. In re Bowie, 1 N. B. R. 628; 3 Fed. Cas. 1067.

Under section 4 of the Act of 1867, it was held that upon the filing of a petition in involuntary bankruptcy, the district court, upon the application of the petitioner, could enjoin the debtor and his grantee from conveying or disposing of any property once owned by the debtor and claimed

to have been fraudulently transferred by him and concealed, and that such an injunction should not be dissolved except upon proof that such action was not in fraud of creditors. In re Abbott, 1 Hask, 250; 1 Fed. Cas. 15.

Where creditors of the bankrupt, prior to proceedings in bankruptcy, filed a bill in equity for an injunction forbidding him to dispose of certain goods, it was held that the bill was nothing more than a petition, application, or other proceeding under the Act. In re Fendley, 10 N. B. R. 250; 8 Fed. Cas. 1137.

Under section 5063, R. S., it was held that the court of bankruptcy had power to determine the question of title to property claimed by him and others on a petition filed by him, where all the parties interested appeared and asked for a determination. Adams v. Collier, 122 U. S. 82.

In involuntary proceedings, the court granted an injunction forbidding the debtor to collect accounts or dispose of their property, but refused to extend it to parties who had not been served with notice of the application. In re Calendar, 5 Law Rep. 129; 4 Fed. Cas. 1045.

A petition in involuntary bankruptcy was filed February 5th, and on the same day, an injunction was issued forbidding the bankrupts and one D. from interfering with the property of the debtors, etc., "until the further order of the court." The injunction was served on D. February 14th. On the 19th, the debtors were adjudged bankrupts. D. had commenced a foreclosure suit against one of the bankrupts before the filing of the petition, and in that suit a decree was entered on the 12th of February, and on the 8th of March, he caused the property to be sold. The court decided that D. had not been guilty of contempt, and that the injunction having been issued under section 5024, R. S., did not operate after the adjudication, notwithstanding its language. In re Irving et al., 8 Ben. 463; 8 Fed. Cas. 108.

[For an important opinion, affirming the authority of the district court under the Act of 1898 to grant an injunction against the sale of property under process of a State court until a petition in bankruptcy can be filed against the debtor, see notes to section 71.]

Jurisdiction Without the District.

In the case cited, Judge Dillon considered, without deciding, the question whether process in bankruptcy can be served on parties interested outside of the district in which the proceedings are pending. Markson v. Heaney, 1 Dill. 497; 16 Fed. Cas. 769.

A subpoena in a suit in equity brought by an assignee is an original process within the eleventh section of the Judiciary Act, and there is no express authority in the Bankrupt Act of 1867, for the service of such a subpoena outside of the district where the suit is brought. Jobbins v. Montague et al., 5 Ben. 422; 13 Fed. Cas. 644.

A register in Vermont ordered a bankrupt to produce certain books and papers, which order was disobeyed, and the facts were certified to the district court where an order was made adjudging the bankrupt guilty of contempt and directing him to deliver the books and papers or be committed to jail in default. The bankrupt was arrested in New Hampshire and committed to jail in Vermont. It was held that the order of the district court was proper and valid; but that the arrest in New Hamp-

shire was illegal and the imprisonment in Vermont in pursuance of such arrest was also illegal. In re Allen, 13 Blatchf. 271; 1 Fed. Cas. 436.

In proceedings pending in New York an order was made upon a party to show cause why certain transfers should not be set aside. The order was served in Illinois. The party thus served appeared by attorney. Later, the attorney asked that his appearance be withdrawn on the ground that it had been made by mistake. The court denied the application, and held that it had jurisdiction over the party in Illinois to make the order prayed for. In re Ulrich et al., 3 Ben. 355; 24 Fed. Cas. 510.

An order was made requiring the bankrupt to appear before the register at his office in St. Paul. The order was served on the bankrupt in Chicago. A motion was made for a warrant of arrest to bring him before the court and answer for a contempt in disobeying the order. The court held that, except in case of personal service of the order within its jurisdiction, it had no power to institute proceedings for contempt. The court intimated, however, that as it was a case of voluntary bankruptcy, he would refuse to grant a discharge to the bankrupt; also that if it was desired he would designate a register in Chicago before whom the examination could be had. In re Hodges, 11 N. B. R. 369; 12 Fed. Cas. 281.

While proceedings in bankruptcy were proceeding in Louisiana, a suit was commenced against the bankrupts in New York, and the bankrupts applied in the district court of the latter state for an injunction staying proceedings in that state. It was held that no court of bankruptcy but that in which the proceedings were pending could grant such an order. In re Richardson et al., 2 Ben. 517; 20 Fed. Cas. 696.

Where proceedings in bankruptcy were commenced in one state and subsequently in another, the court that first acquired jurisdiction by the filing of the petition was held to have the right to proceed to a final determination. In re Brown, 19 N. B. R. 270; 4 Fed. Cas. 336.

"Every district court of the United States has jurisdiction and authority to make all lawful orders and decrees in bankruptcy, although the original petition in bankruptcy was filed in another district, provided that the relief asked is such as cannot be given by the district court where the petition was originally filed, because the persons or property sought to be affected by the order or decree are beyond the reach of its process, and where they are within the reach of the process of the district court whose aid is thus invoked." McGehee et al. v. Hentz et al., 16 Fed. Cas. 103.

Judge Nelson, of the district court of Minnesota, decided that an assignee in bankruptcy cannot commence an action for the recovery of assets in a United States district court other than that in which the bankruptcy proceedings are pending. Lamb v. Damron, 7 N. B. R. 509; 14 Fed. Cas. 994.

It is not contempt of the court of bankruptcy for adverse claimants of property situated in other districts to notify the custodians not to deliver the same to the assignee. In re Litchfield, 13 Fed. Rep. 863.

"Where the necessary parties are before a court of equity, it is immaterial that the *res* of the controversy, whether it be real or personal

property, is beyond the territorial jurisdiction of the tribunal. It has the power to compel the defendant to do all things necessary according to the *lex loci rei sitae* which he could do voluntarily to give full effect to the decree against him." Phelps v. McDonald, 99 U. S. 298.

Less than four months before the commencement of proceedings in bankruptcy in Louisiana, certain creditors in New York brought an action against the bankrupts, and securing service by publication, attached money due the bankrupts from parties in the latter state. In due course, judgment was entered in their favor. The proceedings in bankruptcy in Louisiana resulted in a composition by the terms of which the bankrupts were restored to the possession of their property, and authorized to collect debts for the benefit of the creditors. Thereupon, they commenced a suit in the district court of New York to restrain the attaching creditors there from proceeding under their judgment. The court held that as no assignee had been appointed the suit could not be maintained, and that while the attaching creditors were bound by the composition as to claims against the bankrupts *in personam*, their rights *in rem* against the property attached were not impaired. McGehee et al. v. Hentz et al., 16 Fed. Cas. 103.

Courts of Bankruptcy and State Courts.

A court of bankruptcy will respect the construction of a state law placed upon it by the courts of that state, but decisions of the supreme court of the United States control as to questions of general jurisprudence. Crooks v. Stuart et al., 7 Fed. Rep. 800.

The supreme court held that the jurisdiction conferred on federal courts in suits by the assignee under the Act of 1867 was concurrent with that of state courts in suits of which they had full cognizance. Eyster v. Gaff, 91 U. S. 521.

A state court is not divested of its jurisdiction over an action to enforce a specific lien on property of the debtor by the subsequent commencement of proceedings in bankruptcy. Kimberling v. Hartly et al., 1 Fed. Rep. 571.

The adjudication of a state court between rival claimants to a certain fund will be respected, notwithstanding it involves a decision affecting the legal rights of the parties under the Bankruptcy Act. Van Kleeck v. Miller et al., 19 N. B. R. 484; 28 Fed. Cas. 1025.

The enforcement of a judgment in an action in a state court, commenced after the commencement of proceedings, may be restrained by the district court of a district other than that in which the bankruptcy proceedings were pending. In re Tifft, 19 N. B. R. 201; 23 Fed. Cas. 1213.

A decree by a United States court directed a voluntary assignee to turn over the property of the bankrupt, except certain moneys which he claimed to have disbursed. Held, that a state court could entertain jurisdiction of a suit to compel the assignee in bankruptcy to account for the excepted fund. Neill v. Jackson et al., 8 Fed. Rep. 144.

Referring to the Act of 1841, the supreme court said that its purpose was to secure a prompt and effectual administration of the estate of the bankrupts by the courts of the United States without the assistance of the courts of the states. Ex parte Christy, 3 How. 292; Morton v. Boyd, id. 426.

A state court had jurisdiction of an action by an assignee in bankruptcy to vacate conveyances made by the bankrupt before the commencement of the proceedings as fraudulent against creditors. McKenna v. Simpson, 129 U. S. 506.

A mortgage may be foreclosed in a state court notwithstanding the equity of redemption has been conveyed by the assignee in bankruptcy of the mortgagor, and the state court may also determine whether the mortgagee's claim was against the land or the fund in the assignee's hands. Adams v. Crittenden, 133 U. S. 296.

The court of bankruptcy will stay an action in a state court to recover a provable debt until the question of discharge is determined, and that without respect to whether the debt would or would not be released by the discharge. In re Rosenberg, 3 Ben. 14; 20 Fed. Cas. 1194.

Proceedings were commenced in a state court by one of two partners to terminate the partnership and for an account, and a receiver was appointed. Subsequently, the other partner filed a petition in bankruptcy, claiming that the partnership was insolvent and asking that it be declared bankrupt. Held, that the bankrupt court had jurisdiction notwithstanding the proceedings in the state court. In re Noonan, 5 Chi. Leg. News, 557; 18 Fed. Cas. 298.

Held, that the district court as a court of bankruptcy has jurisdiction over incumbrances on the property of the bankrupt, and authority to determine their validity, extent and priority. In the exercise of this jurisdiction, the district court will proceed by injunction upon the parties, and not against the state courts themselves. Ex parte Christy, 3 How. 292.

A state court which has obtained jurisdiction of property by execution will not be restrained by the United States court from selling the same, but this rule does not apply to proceedings against bankrupts. Ruddells v. Simonton, 3 Biss. 322; 20 Fed. Cas. 1325.

Where a sheriff seized property under an execution on a judgment obtained before the filing of the petition in bankruptcy, the district court will not order such property to be taken out of his hands until the writ is set aside for cause shown, and upon proper proceedings. In re Shuey, 9 N. B. R. 526; 22 Fed. Cas. 45.

Where a bankrupt is arrested on a *capias ad satisfaciendum* from a state court, application for discharge from arrest should be made in the first instance to the state court; this to avoid possible conflict of jurisdiction. In re O'Mara, 4 Biss. 506; 18 Fed. Cas. 690.

In March, a debtor was lodged in jail on a judgment for a tort. In July, he filed his petition in bankruptcy, and on the January following,

he received his discharge. Judge Drummond held that he must be released from custody. In re Simpson, 2 N. B. R. 47; 22 Fed. Cas. 170.

After proceedings in bankruptcy were commenced, a creditor's suit in the state court was brought, the bankrupt, his assignee, and his wife being made parties. The suit was settled by the wife signing, under moral duress, and pressure, an agreement to relinquish three-fourths of her interest in lands inherited from her father; the agreement not being recorded as deeds were required to be, but being ratified by the state court. It was held that the proceeding in the state court was *coram non judice*, and that the bankruptcy court had exclusive jurisdiction in the premises, and that the right of the wife who had a "specific claim" was not affected by the state court proceeding. In re Anderson, 23 Fed. Rep. 482.

A. was sued in a state court and his account in a bank attached. He released the money by giving a bond, and then delivered the amount to a third person to secure his sureties. More than a year afterward, proceedings in bankruptcy were commenced against him. It was held that the assignee could not have an injunction against further proceedings in the state court, and could not take possession of the money as assets of the estate. In re Aubrey, 17 N. B. R. 287; 1 Fed. Cas. 315.

It was held under the Act of 1867 that only the circuit or district court of the district in which the bankruptcy proceedings were pending could enjoin the prosecution of a suit in a state court of another state to foreclose a mortgage on the bankrupt's property, commenced after the filing of the petition. Markson et al. v. Heaney, 1 Dill. 497; 16 Fed. Cas. 760.

The bankrupt court has jurisdiction over the property of a bankrupt, although proceedings have been instituted in a state court for the appointment of a receiver of the bankrupt's property, if the property has not been vested by law in such receiver. In re Nolan, 8 Ben. 559; 18 Fed. Cas. 296.

Paramount power of congress to establish uniform laws on bankruptcy throughout the United States is expressly given by the Constitution, and when congress has exercised this power, state legislation and the jurisdiction and action of the state courts must yield to the paramount authority of the national government. It was held in this case that although proceedings under the state insolvent laws had been instituted, and receivers had taken charge of the property of the alleged bankrupt before bankruptcy proceedings were instituted, superior jurisdiction existed in the bankruptcy court to administer the estate. In re Safe Deposit Inst., 7 N. B. R. 392; 21 Fed. Cas. 139 (1872).

The bankrupt had given an order to certain creditors on a general fund in the hands of state officers. The latter had refused to accept it. The court of bankruptcy restrained the holders of the order from prosecuting a bill in equity against the officers in a state court, and further held that the bankrupt himself, before proceedings, and the assignee, after his appointment, is a necessary party to such a suit. Walker v. Seigel et al., 12 N. B. R. 394; 29 Fed. Cas. 49.

The wife of the bankrupt brought suit in a state court against parties who were in possession of a sealed package which she claimed to own. The state court refused to substitute the trustees in bankruptcy for the defendants, and the trustees thereupon brought a suit in the court of bankruptcy to determine the ownership of the package and for an injunction to restrain the wife from proceeding in the state court. The court granted the injunction. Wilkinson et al. v. Barnard et al., 9 Ben. 249; 29 Fed. Cas. 1254.

A creditor's bill had been filed against the bankrupt, and a receiver appointed. The court held that the proceedings in bankruptcy supersede all proceedings for the administration of the assets of the debtor, subject only to priorities which are obtained by any creditors by the use of diligence, which are to be respected, and which should be paid in the order of priority according to whatever rights have been obtained. In re Whipple, 6 Biss. 516; 29 Fed. Cas. 928.

A creditor may prosecute an attachment suit in a state court to judgment and levy, in the absence of objection by the assignee in bankruptcy. Mattocks v. Ferrington, 2 Hask. 331; 16 Fed. Cas. 1147.

One of three partners petitioned to have the copartnership adjudged bankrupt. The two other partners answered that before the filing of the petition a judgment was entered in a state court dissolving a partnership and appointing a receiver. It was held by Judge Blatchford that the state court had acquired jurisdiction of the three copartners and their copartnership property. The court, therefore, refused to adjudicate the two opposing partners as bankrupts. In re Oehninger, 8 Ben. 487; 18 Fed. Cas. 594.

If a bankrupt is restrained of his liberty under process of a state court in violation of the laws of the United States, the United States district court would, under the provisions of the Act February 5, 1867, have power to release him on *habeas corpus*. In re Seymour, 1 N. B. R. 29; 1 Ben. 348 (1867).

Judge Blodgett held under the Act of 1867 that a state court has jurisdiction of an action by an assignee in bankruptcy to collect assets of the bankrupt. Clark v. Ewing, 3 Fed. Rep. 83.

A court of bankruptcy is not bound by allegations in a complaint, made by a party to the proceedings, in a suit in a state court. In re Williams et al., 6 Biss. 233; 29 Fed. Cas. 1318.

As a general rule, the coure of bankruptcy will not interfere where other courts have assumed full jurisdiction of property upon which liens are claimed to exist. In re Taliafero, 3 Hughes, 422; 23 Fed. Cas. 674.

A general creditor's suit in chancery cannot be brought in another court than the court of bankruptcy against the bankrupt after his adjudication. In re Anderson, 2 Hughes, 378; 1 Fed. Cas. 831.

A judgment in a state court is conclusive upon an assignee in bankruptcy when he appears and defends in the action. Winchester v. Heiskell, 199 U. S. 450; 120 id. 273.

It was held that the assignee being made a party had no authority to consent to a decree in a state court in a suit prosecuted in conflict with the jurisdiction of the bankruptcy court. In re Anderson, 23 Fed. Rep. 482.

Under section 1 of the Act of 1867, one of the powers conferred upon the court in bankruptcy was the "ascertainment and liquidation of liens and other specific claims." This was held to refer only to cases where the claims had not been previously determined by other competent tribunals. The Ironsides, 4 Biss. 518; 13 Fed. Cas. 103.

H. had failed to obey an order of the state court on proceedings supplementary to execution and an order had been issued for him to show cause why he should not be punished for contempt. Subsequently proceedings in involuntary bankruptcy were commenced against him. The court held that it was not a proper case for an injunction against the proceedings for contempt. In re Hill, 2 N. B. R. 140; 12 Fed. Cas. 49.

A court of bankruptcy has no jurisdiction to correct or annul a judgment rendered in a state court. In re Dunn, 2 Hughes, 169; 8 Fed. Cas. 93.

Justice Bradley decided that a receiver in possession of mortgaged property under an order of a state court, before the commencement of proceedings in bankruptcy, can only be dispossessed by the payment and redemption of the mortgage. The court in bankruptcy having ordered such property to be taken from the hands of the receiver and sold, the sale was set aside and the purchase money returned. Davis v. R. R. Co., 1 Woods, 661; 7 Fed. Cas. 164.

A national bank held a second mortgage on certain property of the bankrupt, and the assignee desired to contest the right of the bank to take or hold such security. The court enjoined the mortgagee from foreclosing in a state court. In re Duryea, 17 N. B. R. 495; 8 Fed. Cas. 131.

After a composition had been confirmed, and the money was awaiting distribution, certain parties applied for a receiver of the amounts due three of the creditors, to withhold them pending the result of proceedings in another court. The application was denied. In re Kohlsaat, 18 N. B. R. 570; 14 Fed. Cas. 833.

Upon the sale of certain premises by the assignee in bankruptcy, the bankrupt agreed with the purchaser to vacate them at a certain time, but failed to do so. An application by the purchaser to the court of bankruptcy for the delivery of possession to him was denied on the ground that the laws of the state afforded him an ample remedy as against a tenant holding over. In re Hale, 19 N. B. R. 330; 11 Fed. Cas. 181.

Under the Act of 1841, the district court could issue an injunction against an attachment suit in a state court commenced before the proceedings in bankruptcy. If the attaching creditor does not reside in the district, the injunction can be made against his agents and attorneys. In re Bellows, 3 Story, 428; 3 Fed. Cas. 138 (1844).

Justice Miller expressed the opinion that the Act of 1867 did not give the federal courts exclusive jurisdiction of an action by an assignee in bankruptcy, and added: "If the state courts failed to recognize his legal rights, a presumption not here to be indulged, he can, in the proper mode, bring the case from the highest court of the state to the highest court of the United States." Johnson v. Bishop, Woolw. 324; 13 Fed. Cas. 732.

B. and C. as copartners had been adjudged bankrupts and had appealed to the circuit court. C. had brought suits against B., concerning the joint property and the proceedings in bankruptcy in a state court. The circuit court decided that it had no authority to issue a writ of prohibition to the state court forbidding further proceedings in such suits. In re Bininger et al., 7 Blatchf. 159; 3 Fed. Cas. 407. Later, the court refused to require C. to elect in which court he would proceed. 7 Blatchf. 168; 8 Fed. Cas. 411.

An assignee cannot maintain an action in the district court to recover possession of the property of a bankrupt from a sheriff who holds it by an attachment issued out of a state court before the filing of the petition. Johnson v. Bishop, Woolw. 324; 13 Fed. Cas. 732.

A suit already pending in a state court in which the title to real estate surrendered by the bankrupt is in dispute will not be restrained by the district court; but the district court sitting in bankruptcy may restrain the parties from proceeding in the state court to take the property out of the possession of the assignee in bankruptcy. Hewitt v. Norton, 1 Wood. 68; 12 Fed. Cas. 71.

A court of bankruptcy refused to grant an injunction against the foreclosure of a mortgage in a state court against a bankrupt where his assignee had repeatedly appeared, permitted the action to proceed, and did not object for more than two years, and where it was not certain that the estate would be injured by the foreclosure. Augustine v. McFarland, 13 N. B. R. 7; 2 Fed. Cas. 212.

It was held by Justice Baldwin in an elaborate opinion that a district court of the United States has no power in any case to issue an injunction against the process of a state court. Dudley's Case, 1 Penn. L. J. 302; 7 Fed. Cas. 1150 (1842).

When a mortgagee brings a suit in a state court to foreclose a mortgage against the bankrupt, after adjudication, and the assignee in bankruptcy claims that it is void, the court of bankruptcy may restrain the foreclosure. In re Kerosene Oil Co., 3 Ben. 35; 14 Fed. Cas. 379. Upon appeal to the circuit court, Justice Nelson ordered that the petition of the assignee be amended and filed as a bill in equity, holding that the injunction could only be granted upon a plenary suit in chancery. Ibid., 6 Blatchf. 521; 14 Fed. Cas. 380.

An action was brought in a state court to recover a debt alleged to have been contracted by fraud, and in that action the bankrupt was arrested and gave bail. He applied to the court of bankruptcy for an order discharging him from arrest and releasing his bail. The court affirmed its authority to grant the relief prayed for, provided his ar-

rest was founded on a debt from which he would be released by a discharge in bankruptcy. In re Glaser, 8 Ben. 180; 10 Fed. Cas. 464.

While proceedings in bankruptcy were pending, some of the petitioning creditors brought an action in a state court for the arrest of the bankrupts on the ground that they had fraudulently contracted their indebtedness, and had disposed of a large part of their property to defraud their creditors. The court of bankruptcy enjoined proceedings in this action pending the question of the discharge. In re Goldstein et al., 52 How. Pr. 426; 10 Fed. Cas. 569.

A debtor arrested on process from a state court had applied for the benefit of the act for the relief of poor debtors. Before the hearing, he filed his petition in bankruptcy, and was adjudged a bankrupt. Thereupon he filed a petition that he be released from arrest, and that being denied, subsequently filed a petition for an injunction against further proceedings by the creditors in the state court. This petition was also dismissed. On appeal, the circuit court sustained the action of the lower court. Minon v. Van Nostrand et al., Holmes, 251; 17 Fed. Cas. 454; s. c. 1 Low. 458; 17 Fed. Cas. 455.

A court of bankruptcy will not stay proceedings in a state court to recover a debt incurred by fraud, which would not be affected by a discharge in bankruptcy. In re Leibenstein et al., 4 Chi. Leg. News, 309; 15 Fed. Cas. 250.

Parties may be enjoined by a court of bankruptcy from proceeding to judgment and execution in a state court during the pendency of proceedings. Penny v. Taylor, 10 N. B. R. 200; 19 Fed. Cas. 194.

Congress cannot impose duties on state courts, nor require them to entertain suits to carry out the objects of the Bankrupt Act. Mitchell v. Great Works M. & M. Co., 2 Story, 648; 17 Fed. Cas. 496 (1843).

Under the Act of 1841 a state court had no jurisdiction of a suit by an assignee in bankruptcy to avoid a lien on the property of a bankrupt on the ground of fraud. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 253 (1843).

When a suit in a state court to enforce a lien will tend to draw to it the administration of the Bankrupt Act, a circuit court of the United States will restrain it by injunction. Ibid.

An injunctional order was issued in bankruptcy proceedings restraining a judgment creditor and all other persons from selling the property of the bankrupt on a judgment entered in a state court. Held, that the sheriff and judgment creditor were informed by the service of the order as to what they were forbidden to do, and the fact that they were not named would make no difference. In re Lady Bryan Min. Co., 6 N. B. R. 252; 14 Fed. Cas. 928.

Congress has no power to vest in state courts jurisdiction to carry into effect a bankrupt law. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 253 (1843).

A court of bankruptcy may enjoin the sale of property under an execution issued from a state court before the filing of the petition in bankruptcy. In re Lady Bryan Min. Co., 6 N. B. R. 252; 14 Fed. Cas. 928.

A decision by a court of bankruptcy that a transaction was a violation of the bankrupt law is binding upon the state courts, and a party feeling himself aggrieved is bound to come into the court of bankruptcy for relief. In re Miller, 6 Biss. 30; 17 Fed. Cas. 293.

The state court does not necessarily lose its jurisdiction of a common-law or equity suit simply because the plaintiff is an assignee in bankruptcy. Mitchell v. Great Works M. & M. Co., 2 Story, 648; 17 Fed. Cas. 496 (1843).

Where a court of bankruptcy has ordered the sale of mortgaged premises, a state court is ousted of jurisdiction of proceedings in foreclosure. In re Devore, 16 N. B. R. 56; 7 Fed. Cas. 570.

One of three members of a dissolved firm commenced proceedings in a state court for a settlement of partnership affairs, and was himself appointed receiver of the partnership property in that action. Two months later, the other members of the firm filed a petition that the firm be adjudged bankrupt. It was held that the court of bankruptcy had jurisdiction over the partnership property, and that the third partner should be restrained from disposing of the assets pending adjudication. In re Hathorn et al., 2 Woods, 73; 11 Fed. Cas. 822.

A bankrupt in arrest under process from a state court in a civil action *ex delicto* cannot be released by the United States district court upon a petition for a writ of *habeas corpus*. In re Devoe, 1 Low. 251; 7 Fed. Cas. 565.

When congress adopts substantially an insolvent law of one of the states as a Bankrupt Act, the federal courts are not bound by the decisions of the courts of that state in construing it. In re Knight, 2 Biss. 518; 14 Fed. Cas. 752.

The district court is bound to see that the assignee in bankruptcy is not forcibly dispossessed of the property belonging to the bankrupt that had come into his hands. So held in a case where property was taken from the possession of the assignee under a writ of replevin issued by a state court in a proceeding in which the assignee was not a party, and his title was not in controversy. In re Clark, 9 Blatchf. 379; 5 Fed. Cas. 844.

The rights of creditors will be determined by the Bankrupt Act, and not by a state law, when an adjudication has been had in bankruptcy, and the assignee under the state law has surrendered the property. In re Bonsfield & Poole M. Co., 17 N. B. R. 153; 3 Fed. Cas. 1016.

The circuit court, affirming the district court, decided that where one member of the firm had died, and his share in the partnership had gone into the hands of an administrator by virtue of proceedings in the probate court, and a petition had been filed against the firm, the court of bankruptcy would not take the estate out of the hands of the administrator. In re Daggett, 8 N. B. R. 287, 433; 6 Fed. Cas. 1107, 1108.

After adjudication, a bankrupt was taken into custody by the sheriff on a judgment against him for costs in an action in a state court. The

court of bankruptcy ordered his discharge. In re Borst, 2 N. B. R. 171; 3 Fed. Cas. 913.

Section 1 of the Act of 1867 conferred on the district court power to enjoin proceedings in a state court by a creditor to enforce a lien on the property of the bankrupt. When there is nothing to be done but to ascertain an alleged lien, this power can be exercised summarily. In re Clark, 9 Blatchf. 372; 5 Fed. Cas. 841.

A decree of foreclosure was made after the filing of a petition in bankruptcy, but before the service of an injunction upon the mortgagee in the bankruptcy proceedings. After adjudication, the mortgaged property was sold, and thereupon the assignee sought to have the sale and the mortgage itself set aside on the ground of usury. The court decided that the decree of the state court barred the right of the assignee to raise the question of usury, and denied the application. Cutter v. Dingee, 8 Ben. 469; 6 Fed. Cas. 1078.

Where mortgaged property is in the possession of receivers appointed by a state court, the district court has no jurisdiction over a petition by the mortgagee for a sale of the property by the assignee in bankruptcy. Bradley et al. v. Healey, Holmes, 451; 3 Fed. Cas. 1153.

A court of bankruptcy is not authorized to vindicate the title of the purchaser to lands sold by the assignee. That is left to the state courts. Briggs v. Stephens, 7 Law Rep. 281; 4 Fed. Cas. 124 (1844).

The bankrupt was sued for a debt in a state court after the commencement of the proceedings. Thereafter a composition, including the debt upon which he was sued, was confirmed. He applied to the state court for leave to plead the composition as a defense, which application was refused. Subsequently he applied to the court of bankruptcy to enjoin the creditor from interfering with his property for the indebtedness on the judgment, which in the meantime had been entered in the state court. The court of bankruptcy decided that it had no power to issue such an injunction. In re Nebenzahl et al., 9 Ben. 243; 17 Fed. Cas. 1269.

Upon the filing of a petition in bankruptcy, an injunction was issued to restrain the sale of the debtor's property on execution. The bankrupts had joined issue on the allegations in the petition, and demanded a jury. Thereupon they made a motion to dissolve the injunction on the merits. The court refused to dispose of the issues on a motion, notwithstanding the property was perishable, and further held that it had no power to sell the property until it came into the possession of the court. In re Metzler, 1 Ben. 356; 17 Fed. Cas. 240.

The holder of a chattel mortgage was enjoined from taking possession of the mortgaged goods. He had knowledge of the injunction, but it had not been served upon him. He was held guilty of contempt in bringing an action of replevin and recovering possession of the property. In re Feeny, 1 Hask. 304; 8 Fed. Cas. 1124.

Judge Hughes, of the district court of Virginia, used this language: "It would be too great stretch of the jurisdiction of this court to take a fund from the estate of a decedent, not in bankruptcy, to pay the debt

of a partnership, not in bankruptcy, on the single ground that the bankrupt himself was one of that firm." The decision was affirmed by the circuit court on appeal. In re Frazier, 2 Hughes, 293; 9 Fed. Cas. 735.

Funds in the hands of the assignee awaiting distribution cannot be garnished by process from a state court. In re Bridgman, 2 N. B. R. 252; 4 Fed. Cas. 112.

In the exercise of its power to ascertain and liquidate liens upon a bankrupt's property, the court of bankruptcy may enjoin a creditor from enforcing a judgment in a state court; but it will not interfere after the sale of the property under execution on such a judgment. In re Fuller, 1 Saw. 243; 9 Fed. Cas. 978.

"No doubt can be entertained of the power of a bankruptcy court to control the estire estate of the bankrupt, both contingent and actual, whether it be not or be the subject of litigation in other courts, and in whatever stage of litigation. Whether, therefore, a bankruptcy court can exercise its jurisdiction over such part of the bankrupt's estate as may be the subject of litigation in other courts, or be covered by liens equal to or exceeding its value is not a question of power and right, but only of discretion." In re Addison, 3 Hughes, 430; 1 Fed. Cas. 167.

M. was adjudged a bankrupt on the ground that he had transferred some of his goods to B. with intent to give him a preference. Immediately upon adjudication, the marshal seized the property transferred to B., and turned it over to the assignee, who sold it. B. brought an action against the marshal and the assignee to recover damages for taking the property. The district court enjoined B. from proceeding in this action, and on appeal to the circuit court, Judge Drummond sustained its action, and used this language: "Although it might be unpleasant to interfere with the state court, still when the law could not be properly administered by the bankrupt court, owing to the interference of the state court, and its determination to adjudicate on the rights of parties and property, as in this case, then the bankrupt court ought not to hesitate to assert its authority." In re Miller, 6 Biss. 30; 17 Fed. Cas. 293.

After proceedings in bankruptcy had been commenced, the mortgagees of certain real estate belonging to a bankrupt took possession of it with a view to foreclosure under the statute. The court decided that he must apply to the court in which the proceedings in bankruptcy were pending, which, under the Act of 1867, has exclusive jurisdiction over the property. Hutchins v. Muzzy Iron Works, 8 N. B. R. 458; 12 Fed. Cas. 1076.

In a suit by an assignee in bankruptcy, the district court refused to examine into the validity of a judgment confessed by the bankrupt in a state court, the jurisdiction of which was not denied. Atkinson v. Purdy, Crabbe, 551; 2 Fed. Cas. 112 (1844).

It was held that the Act of 1867 did not impair the provision of the Act of March 3, 1793, forbidding injunctions to restrain proceedings in state courts. Campbell's Case, 1 N. B. R. 165; 4 Fed. Cas. 1153.

The Law of 1841 was held not to authorize the court to release a bankrupt from arrest before discharge. In re Comstock, 5 Law Rep. 163; 6 Fed. Cas. 231 (1842).

An action of replevin for the alternative remedy of securing the value of the goods will be stayed pending the question of the bankrupt defendant's discharge. In re Cohen, 19 N. B. R. 133; 6 Fed. Cas. 14.

It was held to be a contempt of court for a sheriff and mortgagee to levy on mortgaged property in the possession of the bankrupt under a decree of foreclosure, after an assignee had been appointed. Byrd v. Harrold et al., 18 N. B. R. 433; 4 Fed. Cas. 949.

The court of bankruptcy loses jurisdiction after the discharge, and parties may then seek relief in state courts. Penny v. Taylor, 10 N. B. R. 200; 19 Fed. Cas. 104.

The respondents disobeyed an injunction forbidding them to proceed with an execution under a judgment from a state court. It was held that they were punishable for contempt, In re Atkinson, 7 N. B. R. 143; 2 Fed. Cas. 96.

State courts are not bound to take judicial notice of adjudications in bankruptcy by the district court. Johnson v. Bishop, Woolw. 324; 13 Fed. Cas. 732.

While proceedings were pending, the bankrupt was arrested on process of a state court on a debt for which he was not entitled to a discharge because it was contracted in fraud. It was held that he was not entitled to release on *habeas corpus*. In re Alsberg, 16 N. B. R. 116; 1 Fed. Cas. 557.

"The commencement of proceedings in bankruptcy transferred to this court the jurisdiction over the bankrupt, his estate, and all parties and questions connected therewith, and operated as a supersedeas of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of this court until the question of bankruptcy shall have been disposed of." Jones v. Leach et al., 1 N. B. R. 595; 13 Fed. Cas. 987.

Under a provisional warrant, the marshal seized certain property claimed by a third person. The latter sued the marshal in a state court for trespass. The assignee appeared and asked for an injunction against the prosecution of the suit in a state court. The petition was denied, and it was held that the petitioning creditors were bound to defend the marshal in such action. In re Marks, 2 N. B. R. 575; 16 Fed. Cas. 764.

An adjudication relates back and dissolves an attachment by a state court from the date of the filing of the petition. In re Preston, 6 N. B. R. 545; 19 Fed. Cas. 1291.

The district court, as a court of bankruptcy, ordered a stay of proceedings in a state court against a bankrupt, until the question of discharge could be determined. In re Reed, 1 N. B. R. 1; 20 Fed. Cas. 416.

A court of bankruptcy cannot increase or decrease alimony decreed by a state court, notwithstanding it is a lien upon the bankrupt's estate. In re Garrett, 2 Hughes, 235; 10 Fed. Cas. 47.

Proceedings in bankruptcy will not oust a state court from its jurisdiction of a foreclosure case when the issues have been joined and the cause is ready for trial. The state court may then proceed to enter judgment and decree, and order the sale of the property. Getz et al. v. First Nat. Bank, 10 Fed. Cas. 273.

It seems that a court of bankruptcy will allow a creditor to sue the bankrupt in a state court where his rights might be lost if a suit were not commenced forthwith. On such an application, the court of bankruptcy will not inquire whether the debt is one from which the bankrupt would be relieved by his discharge. In re Ghirardelli et al., 1 Saw. 343; 10 Fed. Cas. 275.

Upon the filing of a petition in bankruptcy all the property of the bankrupt is in the custody of the court. A mortgagee who proceeds thereafter to foreclose in a state court is in contempt, and all proceedings thereunder are null and void. Phelps v. Sellick, 8 N. B. R. 390; 19 Fed. Cas. 463.

A law to establish a uniform system of bankruptcies should not be construed to give exclusive jurisdiction to state courts of proceedings necessary to affect the purposes of the act, inasmuch as it is not within the power of congress to compel such tribunals to entertain suits brought by an assignee for the collection of the assets of the bankrupt. Goodall v. Tuttle, 3 Biss. 219; 10 Fed. Cas. 579.

Proceedings had been commenced in a state court for the purpose of distributing the estate of an insolvent corporation, and a receiver had been appointed therein. This was held not to be a ground for dismissing a petition in involuntary bankruptcy. In re Green Pond R. Co., 13 N. B. R. 118; 10 Fed. Cas. 1178.

A debtor who had been arrested on process from a state court, and had been released on a bond to apply for the benefit of the insolvent laws of the state, subsequently filed a petition in bankruptcy. The court of bankruptcy refused to stay the proceedings in the state court before a discharge. In re Rank, Crabbe, 493; 20 Fed. Cas. 273 (1842).

A court of bankruptcy having secured jurisdiction of an insolvent corporation, the assignee may maintain a suit in equity to set aside the transfer of the property to a receiver appointed by a state court. Platt v. Archer, 9 Blatchf. 559; 19 Fed. Cas. 822.

The district court will maintain its jurisdiction as against that of state courts, in matters arising under the Bankrupt Act, when it is necessary to protect its officers. Main et al. v. Glen, 7 Biss. 86; 16 Fed. Cas. 503.

Justice Field affirmed a decision of the district court for Nevada to the effect that a court of bankruptcy can enjoin the sale of property by a sheriff under a judgment obtained in a state court before the commencement of proceedings in bankruptcy, and can also declare the judgment of a state court void if it was an unlawful preference under the Bankrupt Act. In re Malory, 1 Saw. 88; 16 Fed. Cas. 549.

A landlord who evicted the bankrupt by summary proceedings in the state courts after the commencement of proceedings in bankruptcy was

held to be in contempt of the court of bankruptcy, as the possession of the bankrupt after the commencement of proceedings was the possession of the court. In re Steadman, 8 N. B. R. 310; 22 Fed. Cas. 1155.

A bank which had been enjoined from foreclosing a mortgage against the bankrupt in a state court, asked that the injunction be modified so that it might proceed to the entry of judgment. The motion was denied by the court of bankruptcy for the reason that the rights of the mortgagee would be fully protected when the property was sold under the direction of the court. In re Duryea, 7 N. B. R. 495; 8 Fed. Cas. 131.

When an executor recovers money in bankruptcy proceedings for the estate of his decedent, the probate court, and not the court of bankruptcy, is the proper tribunal to control its distribution. In re Major, 2 Hughes, 215; 16 Fed. Cas. 526.

Jurisdiction Generally.

"The bankruptcy court is the special creature of statutory law, and all of its jurisdiction is derived from the act which creates it." Jobbins v. Montague et al., 6 N. B. R. 509; 13 Fed. Cas. 648.

Article I, section 8 of the Constitution gives congress plenary power over the subject of bankruptcy, without respect to the laws in force in England when the Constitution was adopted. Silverman's Case, 1 Saw. 410; 22 Fed. Cas. 135.

Held, that congress under the power conferred by the Constitution over bankruptcy has authority to destroy existing contracts and release liens. In re Smith, 8 N. B. R. 401; 22 Fed. Cas. 399.

The jurisdiction of the United States district court to sell real estate in satisfaction of liens is concurrent and not exclusive. In re Bowie, 1 N. B. R. 628; 3 Fed. Cas. 1067.

The court obtains full and complete jurisdiction for all purposes whatsoever by the petition, whether voluntary or involuntary, adjudication, and warrant. In re Archenbrown, 11 N. B. R. 149; 1 Fed. Cas. 1084.

Judge Deady of the district court of Oregon said of the Act of 1867: "Such a statute is not to be construed strictly, as if it were an obscure and special penal enactment, and this was the sixteenth and not the nineteenth century. The act establishes a system, and regulates in all their details the relative rights and duties of debtor and creditor. Such an act must be construed — as indeed should all acts — according to the fair import of its terms with a view to effect its objects, and to promote justice.'" In re Muller et al., Deady, 513; 17 Fed. Cas. 971.

A voluntary bankrupt under the Act of 1841 applied to the district court of Missouri, after an adjudication in due form, for a full discharge from all his debts under the provisions of said act. In denying the petition, Judge Wells said: "The court regrets that an imperious sense of duty compels it to declare that the act of congress, so far as it undertakes to discharge a debtor from debts contracted before the passage of the act, without payment, and to discharge his future acquisitions of property from liabilities for those debts, without the consent of a

given majority of his creditors, is unconstitutional." In re Klein, 2 N. Y. Leg. Obs. 185; 14 Fed. Cas. 719. On appeal to the circuit court, Justice Catron, reversing the district court, pointed out the difference between the English and the American systems of bankruptcy; showed that voluntary bankruptcy was recognized by the laws of the states before the adoption of the Constitution; that this practice was meant to be recognized by the constitutional provision on the subject, and thereupon decided that the voluntary features of the Act of 1841 were not unconstitutional. Ibid. 1 How. 277, n.; 14 Fed. Cas. 716.

The question of jurisdiction can be raised at any stage of an action, and the defendant is not barred by appearing and answering. Jobbins v. Montague et al., 6 N. B. R. 509; 13 Fed. Cas. 648.

When a petition discloses a want of jurisdiction, the consent of the parties cannot cure the defect, and the court should take notice of the point of its own motion. Hopkins v. Carpenter, 18 N. B. R. 339; 12 Fed. Cas. 492.

A person not interested in the bankruptcy proceedings may by petition have his rights in property in custody of the bankrupt court determined by that court. The proper parties being made, such proceeding is plenary, and binds all parties. In re Anderson, 23 Fed. Rep. 482.

In the case cited the supreme court considered without deciding whether the jurisdiction of the district court as a court of bankruptcy over all the property of the bankrupt is exclusive. Norton v. Boyd, 3 How. 426.

When all parties appear and seek the determination, the court of bankruptcy has power to determine the title of property in dispute between the assignee and others. So held under section 5063, R. S. Adams v. Collier, 122 U. S. 382.

Held, under the Act of 1867 (§ 4970, R. S.), that the district court has jurisdiction of a suit by creditors against the assignee of a bankrupt member of a partnership to procure an adjudication of their debts and their right of priority as against individual creditors.

"The moment U. filed his voluntary petition to be declared a bankrupt, all the property, in possession or in action, which he included on his inventory and schedules came, by the effect of the bankruptcy law, into the prehensory power of the court as fully as if it was in the actual and visible presence of the court; consequently it is under its protection and within its exclusive control." Byrd v. Harrold et al., 18 N. B. R. 433; 4 Fed. Cas. 949.

The district court, sitting as a court of bankruptcy, is always open, and may vacate orders and decrees at any time upon a proper showing. Boutwell v. Allerdice, 2 Hughes, 121; 3 Fed. Cas. 1020.

It was held that section 1 of the Act of 1867 did not authorize the foreclosure of a mortgage on the bankrupt's estate by the summary jurisdiction of the district court. In re Casey, 10 Blatchf. 376; 5 Fed. Cas. 279.

Under the Act of 1841 the court of bankruptcy had jurisdiction of an action by an assignee to recover a balance due from a consignor to the

bankrupt as broker at the time of the filing of the petition in bankruptcy. Kelly v. Smith et al., 1 Blatchf. 290; 14 Fed. Cas. 271 (1848).

The trustees named in a deed of trust given to secure the payment of promissory notes cannot sell the property after an adjudication in bankruptcy against the mortgagor, except by leave of the court of bankruptcy. Dooley v. Virginia M. & F. I. Co., 2 Hughes, 847; 7 Fed. Cas. 912.

A court of bankruptcy may proceed summarily against the sureties on a forthcoming bond, notwithstanding the assignee had previously brought an action on the bond resulting in a verdict for the defendant, which was set aside and a new trial granted. In re Mayo, 4 Hughes, 384; 16 Fed. Cas. 1262.

A decedent, by a codicil to his will, named two persons as executors for the purpose only of carrying on his business as a banker. They qualified as executors and conducted the business until they were obliged to suspend. A petition in bankruptcy was filed against them. It was held that this was not a trust that could be administered under the Bankrupt Act of 1867. Graves et al. v. Winter et al., 9 N. B. R. 357; 10 Fed. Cas. 999.

The United States district court for the southern district of New York decided that an assignee in bankruptcy under the laws of Great Britain could maintain an action in that court to collect assets of the bankrupt to the same extent that the bankrupt himself could have sued if no bankruptcy had taken place. Hunt et al. v. Jackson, 5 Blatchf. 349; 12 Fed. Cas. 924.

Justice Story held that where a petition had been filed on the day that the Act of 1841 was repealed the court could take jurisdiction, and maintain it to the close of the proceedings. In re Richardson et al., 2 Story, 571; 20 Fed. Cas. 699.

A court of bankruptcy cannot compel a bankrupt after discharge to execute papers necessary to the conveyance of his property. In re Nichols, 1 Fed. Rep. 842.

In deciding a case that arose in 1837, under the Bankrupt Act of 1800, the United States district court for Pennsylvania held that the district judge had power to supersede a commission of bankruptcy under the act mentioned without the express grant of such power; that the effect of such a supersedeas was to place the bankrupt and his estate in the same position they would have been in if no proceeding had been commenced, and that a supersedeas will not be revoked to allow a petitioner to prove debts many years after it was granted, except on a strong showing to rebut the presumption that the debts had been paid. In re Morris, Crabbe, 70; 17 Fed. Rep. 785 (1837).

By stipulation, certain mortgaged property of the bankrupt was sold by the marshal, and the proceeds paid into court. The court held that by this agreement, the assignee on one hand, and the mortgagee on the other, submitted their matters in dispute to the district court upon a petition to be filed and waived their respective rights to institute pro-

ceedings in equity or at law, either in the district or circuit court. In re Masterson, 4 N. B. R. 553; 16 Fed. Cas. 1084.

Where a forthcoming bond was given in bankruptcy proceedings, it was held that the district court might order the goods or the value thereof to be delivered to the court by the obligors. Rosebaum v. Garnett, 3 Hughes, 662; 20 Fed. Cas. 1193.

An adjudication of bankruptcy under the Act of 1867 is conclusive as to the insolvency of the petitioner and that he owed more than $300, but not that he is within the jurisdiction of the court otherwise. In re Goodfellow, 1 Low. 510; 11 Fed. Cas. 594.

It is competent for a court of bankruptcy to order the seizure of the bankrupt's property while in the possession of another claiming to own the same. Feibelman v. Packard, 109 U. S. 421.

Held, under the Act of 1841, that there is no distinction in a court of bankruptcy between an order of the judge and an order of the court, the act of the judge being the act of the court. In re Mott, 6 Fed. Rep. 685.

In composition proceedings, before adjudication, a court of bankruptcy has no jurisdiction to determine questions of title between the alleged bankrupt and persons who were not parties to the proceedings. In re Waitzfelder et al., 18 N. B. R. 260; 28 Fed. Cas. 1343.

It appeared from the books of the bankrupts that they ought to have turned over $50,000 worth of property, and they did in fact turn over $18,000 worth. Upon an examination, the district court found that they had concealed $7,700, and ordered them to pay that sum to the assignee. On review, the circuit court affirmed the order. In re Peltasohn, 4 Dill. 107; 19 Fed. Cas. 126.

On the question of the authority of the district court as a court of bankruptcy to sell the bankrupt's real estate free from incumbrances, the court, construing the Act of 1867, used this language: "The power is given by the first section of the Bankrupt Act by which the jurisdiction of the court is extended 'to the ascertainment and liquidation of the liens and other specific claims' in the bankrupt's assets 'to the adjustment of the priorities and conflicting interest of all parties,' and 'to the marshaling and disposition of the different funds and assets so as to secure the rights of all parties to the due distribution of the assets among all the creditors.' Under the Bankrupt Act of 1841, less comprehensive and explicit provisions were held by the supreme court to confer this power." In re Rhodes, 20 Fed. Cas. 652.

The jurisdiction of a court of bankruptcy is subject to collateral attack in another court. Adams et al. v. Tarrell, 4 Fed. Rep. 796.

The court refused to set aside an adjudication on the ground that the petition showed a want of jurisdiction, and held that the point should be raised on the application for a discharge. In re Penn et al., 4 Ben. 99; 19 Fed. Cas. 151.

[See notes to §§ 9, 11, 18 and 23.]

CHAPTER III.

BANKRUPTS.

§ 3. **Acts of Bankruptcy.**— (a.) Acts of bankruptcy by a person shall consist of his having:

(1.) Conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or

(2.) Transferred, while insolvent,* any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or

(3.) Suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or

(4.) Made a general assignment for the benefit of his creditors; or

(5.) Admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b.) A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after: The date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

(c.) It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

* The word "insolvent" as used in this Act is defined in section 1, clause 15. This definition destroys the pertinence of a large number of decisions to the effect that insolvency consists of a present inability to pay one's debts as they mature in the ordinary course of business.

(d.) Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

(e.) Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

Fraudulent Payments and Transfers.

A payment which was otherwise an act of bankruptcy is none the less so because it was made upon a fiduciary debt. In re Dibblee et al., 3 Ben. 283; 7 Fed. Cas. 651.

The payment by an insurance company to insurees of unearned premiums is not such a preference as to support a petition for involuntary bankruptcy. Knickerbocker Ins. Co. v. Comstock, 9 N. B. R. 484; 14 Fed. Cas. 751.

A bank certified a check on the promise of the drawer that he would make his account good during the day. It was held that this created simply the relation of debtor and creditor, and that the payment of the debt after insolvency was an act of bankruptcy. Payne et al. v. Solomon, 14 N. B. R. 162; 19 Fed. Cas. 12.

An insolvent corporation made a payment of rent to preserve a lease of great value. The payment was held to be an act of bankruptcy under the Act of 1867, notwithstanding it was made in good faith, and was

for the best interests of the company. In re Merchants' Ins. Co., 3 Biss. 162; 17 Fed. Cas. 41.

Where the petition charged a payment to one creditor by an insolvent debtor with intent to give a preference, a mere denial of the intent is not sufficient. The debtor must show with what intent he made such payment. Failing in that, judgment may be given against him as upon a failure to answer. Silverman's Case, 1 Saw. 410; 22 Fed. Cas. 135.

An insolvent debtor being indebted to a railroad company for freight, paid it in full by furnishing lumber. This was held to be a preference and an act of bankruptcy. Farrin v. Crawford et al., 2 N. B. R. 602; 8 Fed. Cas. 1084.

An insolvent debtor who gives a preference to a creditor commits an act of bankruptcy, however innocent the preferred creditor, or the person to whom the transfer or payment is made, may be. In re Drummond, 1 N. B. R. 231; 7 Fed. Cas. 1108.

Payments for life insurance by an insolvent debtor were held to be unlawful; otherwise, as to insurance upon a house and furniture in pursuance of covenants in a lease. In re Rosenfeld, 2 N. B. R. 116; 20 Fed. Cas. 1198.

A conveyance that is made with the intent to prefer one creditor, but in operation would delay all creditors, is an act of bankruptcy. In re Williams et al., 1 Low. 406; 29 Fed. Cas. 1322.

A transfer by one member of a firm of his individual property with intent to prefer a firm creditor, or to defraud firm creditors, will not support involuntary proceedings against the firm. In re Williams et al., 1 Low. 406; 29 Fed. Cas. 1322.

It was held not to be an act of bankruptcy for a debtor to turn over securities in fulfillment of a prior agreement that the proceeds of all overdrafts should be the property of the bank; but the law was held to be otherwise in the case of a mere promise to deliver such securities as he should purchase with overdrafts. Payne et al. v. Solomon, 14 N. B. R. 162; 19 Fed. Cas. 12.

A conveyance that was fraudulent at common law was an act of bankruptcy under the Law of 1841. Gassett et al. v. Morse et al., 21 Vt. 627; 10 Fed. Cas. 79.

A debtor settled with all of his creditors except one, whom he secured by a transfer of property on a promise that he should have a liberal extension of time to pay. Upon a petition filed by the debtor so secured, the transaction was held to be an act of bankruptcy. Ecfort et al. v. Greely, 6 N. B. R. 433; 8 Fed. Cas. 279.

A trader gave his father-in-law a chattel mortgage of his stock to indemnify him as surety on a note. The mortgagor retained possession of the goods, and continued to sell them in the usual way. Two months later, the mortgagee took possession of the goods under the mortgage. It was held that the mortgage and the seizure of the goods were both acts of bankruptcy. In re Foster, 18 N. B. R. 64; 9 Fed. Cas. 524.

The conveyance by a merchant of the whole of his property, notwithstanding it is made for the equal benefit of all of his creditors, is an act of bankruptcy *per se;* but the rule is otherwise in case of a conveyance of a part of his property to a particular creditor, unless made in contemplation of bankruptcy, or to give the creditor a preference. Jones v. Sleeper, 2 N. Y. Leg. Obs. 131; 13 Fed. Cas. 1030 (1843).

While negotiations were in progress for an extension, the debtors indorsed a bill of lading to a creditor for the equal benefit of all creditors, and for the purpose of protecting the property from attachment. This was held not to be an act of bankruptcy. Ex parte Potts et al., Crabbe, 469; 19 Fed. Cas. 1199 (1842).

A firm operated a sugar plantation, which the members of the firm owned as joint tenants. For the purpose of defrauding the creditors of the partnership, they executed a mortgage to a third person without consideration. This was held to be an act of bankruptcy by the firm. Lastrapes et al. v. Blanc et al., 3 Woods. 134; 14 Fed. Cas. 1164.

It is not an act of bankruptcy for a solvent debtor who did not contemplate bankruptcy, to give a mortgage on personal property to secure a pre-existing debt, notwithstanding the mortgage was made with intent to give a preference. In re Dunham et al., 2 Ben. 488; 8 Fed. Cas. 33.

A conveyance of property for advances made about the same time was not an act of bankruptcy under the Act of 1867; otherwise where it was made some time before the advances. In re Pierson, 10 N. B. R. 107; 19 Fed. Cas. 661.

On the question whether a chattel mortgage given partly for an existing debt and partly for advances to be made is an act of bankruptcy, Judge Lowell quoted, with approbation, the following from Robison on Bankruptcy: "The weight of authority would seem to be in favor of a transaction of this sort not being an act of bankruptcy where the advance is made *bona fide* to enable the debtor to meet his engagements or carry on his business. Such an act may be, and in fact often is, the wisest course a trader can take to promote the interest of his creditors." Ex parte Ames; In re Macay et al., 1 Low. 561; 1 Fed. Cas. 746.

Of a firm of four partners, one gave a fraudulent preference, and another assented to the transaction. The others dissented as soon as they heard of it. The court held that this was an act of bankruptcy on the part of the partner who made the assignment, and the one who consented to it; that the deed was void; that the partners who had not consented were not personally affected, and had not committed an act of bankruptcy; but that the firm and the partners, being insolvent, must be declared bankrupts under section 14 of the Act of 1841. Ex parte Galbraith, 1 N. Y. Leg. Obs. 5; 9 Fed. Cas. 1077 (1842).

While the debtors were solvent they agreed to give collateral security for advances made subsequently, and after they became insolvent, they transferred the collateral. The court held that this was not an act of bankruptcy. Ex parte Potts et al., Crabbe, 469; 19 Fed. Cas. 1199 (1842).

A mortgage of the present and future stock of a merchant to secure

promised advances is *prima facie* fraudulent, and an act of bankruptcy even though it be a valid security. In re Holland, 2 Hask. 90; 12 Fed. Cas. 335.

The fact that a debtor sold his property for the purpose of going into a new business, the sale being *bona fide*, did not constitute an act of bankruptcy under the Law of 1867, though he kept the proceeds in money, and not in tangible property that could be seized on process. Fox v. Eckstein, 4 N. B. R. 373; 9 Fed. Cas. 626.

In involuntary proceedings it appeared that while the alleged bankrupts were negotiating for an extension of their paper, they ordered a piano for a customer who refused to receive it, and thereupon they returned it to the vendors. It was held that this was not a preference, or an act of bankruptcy. Done v. Compton et al., 2 N. B. R. 607; 7 Fed. Cas. 776.

It is not an act of bankruptcy for an insolvent debtor to continue the sale of his stock at retail, and endeavor to make a settlement with his creditors. In re Munger et al., 4 N. B. R. 295; 17 Fed. Cas. 986.

Referring to section 44 of the Act of 1867, Judge Lowell said: "The statute seems to be directed against frauds upon the creditors as a body, and it does not refer the intent to the time of the purchase, but to that of the disposal of the goods out of the usual course of trade, and at that time the fraud could not injure one creditor more than the rest." U. S. v. Clark, 1 Low. 402; 25 Fed. Cas. 446.

Where one partner retires from a firm and transfers his assets and liabilities to another, the transaction is not necessarily an act of bankruptcy on the part of the partnership, but the question to be determined is whether it was intended to give a preference to the individual over the firm creditors, or to place them on an equality, or in any way to operate as a fraud. Ex parte Shouse, Crabbe, 482; 22 Fed. Cas. (1842).

Debtors, who were insolvent at the time, gave a chattel mortgage on tools and machinery to certain creditors. It was held that they had committed an act of bankruptcy within the meaning of section 39 of the Act of 1867. In re Rogers et al., 2 N. B. R. 397; 20 Fed. Cas. 1105.

A loan of money in good faith on a mortgage out of which an insolvent debtor prefers certain creditors will not be considered as in fraud of the bankrupt law when it does not appear that the mortgagee was aware of such insolvency, or that an illegal preference was intended. In re Packard, 1 Low. 523; 18 Fed. Cas. 957 (1871).

The execution of a chattel mortgage on the debtor's stock of goods with intent to hinder, delay, and defraud his creditors was held to be an act of bankruptcy under the Act of 1867. In re McKibben, 12 N. B. R. 97; 16 Fed. Cas. 210.

It does not constitute an act of bankruptcy for one member of an insolvent firm to transfer property of the firm to another member. In re Munn, 3 Biss. 442; 17 Fed. Cas. 989.

The taking of security for a present loan to a debtor doing business is not in violation of the letter or spirit of the Bankrupt Act. Wadsworth v. Tyler, 2 N. B. R. 316; 28 Fed. Cas. 1320.

The term "fraudulent conveyance" may apply to a legal fraud, and not one involving moral turpitude. Wakeman v. Hoyt, 5 Law Rep. 309; 28 Fed. Cas. 1350.

It was held not to be an act of bankruptcy for a debtor to sell his stock of goods when there was no proof that he was insolvent at the time, and the purchaser acted in good faith. In re Valliquette, 4 N. B. R. 307; 28 Fed. Cas. 930.

The intent is a question of fact, but if a note and mortgage executed by the bankrupt are fictitious, the only reasonable inference in the premises is that it was given with intent to hinder and delay creditors, if not to defraud them. In re Ryan, 5 Leg. Gaz. 263; 21 Fed. Cas. 105.

A sale by one insolvent partner to another of his interest in the firm for a sufficient consideration is not a fraud on creditors of the firm; the assets so transferred being still liable to the debts of the partnership. Russell v. McCord, 17 N. B. R. 508; 21 Fed. Cas. 51 (1878).

The act charged in the petition was a conveyance by a railroad corporation of its property in trust to secure bonds, the proceeds of which were to be applied to pay all its unsecured debts. Creditors were allowed to take the new bonds, or the proceeds thereof, at their option. The conveyance was held not to be an act of bankruptcy. In re Union Pac. Co., 10 N. B. R. 178; 24 Fed. Cas. 624.

In the case cited, Judge Lowell expressed the opinion, though he did not expressly decide, that it would not be an act of bankruptcy for an individual debtor to mortgage his property for the payment of his debts ratably. Ibid.

Prior to the commencement of proceedings, the bankrupt had sold and received the purchase price of certain real and personal property. Held, that a conveyance made after the commencement of proceedings was valid, and not a fraud upon the Bankrupt Act. Steadman v. Caswell et al., 2 Hask. 375; 22 Fed. Cas. 1160.

A transfer of partnership property after insolvency to pay a debt common to all the partners, and which was not a firm debt, was held to be an act of bankruptcy under the Law of 1867. In re Matot et al., 16 N. B. R. 485; 16 Fed. Cas. 1109.

Judge Brown, of the district court of Michigan, said: "The law is as well settled in bankruptcy as in equity that the party who has become a party to, assented, or taken benefit from a fraudulent conveyance is estopped thereby to claim the same as a fraud or an act of bankruptcy." In re Williams, 14 N. B. R. 132; 29 Fed. Cas. 1327.

It is an evidence of fraud for an insolvent debtor to dispose of property otherwise than in the ordinary course of business. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

An assignment for the benefit of creditors was signed by three of five partners personally, and in the firm name by one partner as attorney in fact without, as it was alleged, any power of attorney from the firm authorizing him so to do. The assignment having been set up in a petition

by creditors in involuntary bankruptcy, certain other creditors asked for leave to contest the adjudication on the ground that the assignment was void. The motion was denied for the reason that it did not show that the other partners did not consent to the assignment. In re Lawrence et al., 10 Ben. 4; 15 Fed. Cas. 21.

The Act of 1867 did not prevent an insolvent debtor from selling or exchanging his property before the commencement of proceedings against him if there was no intent to hinder, defraud or delay creditors. Cook v. Tullis, 18 Wall. 332.

"The act of congress was designed to secure an equal distribution of the property of an insolvent debtor among his creditors, and any transfer made with a view to secure the property or any part of it to one and thus prevent such equal distribution is a transfer in fraud of the act." Toof v. Martin, 13 Wall. 40.

Upon the dissolution of a partnership, its entire effects were transferred to the only solvent partner, who sold them in gross. This was held not to be an act of bankruptcy. In re Weaver, 9 N. B. R. 132; 29 Fed. Cas. 485.

An insurance company, after paying all its current expenses, made an assignment under the laws of Ohio of all its assets for the equal benefit of its creditors. Judge Sherman held, under the Act of 1867, that this was not an act of bankruptcy. Smith et al. v. Teutonia Ins. Co., 4 Chi. Leg. News, 130; 22 Fed. Cas. 685.

A transfer by one member of a firm of his personal property will support proceedings against him only, notwithstanding it was made to hinder, delay or defraud firm creditors, or to give a preference to one of them. In re Redmond et al., 9 N. B. R. 408; 20 Fed. Cas. 400.

An assignment of all the property of a debtor for the equal benefit of creditors was held to be an act of bankruptcy under the Act of 1867. In re Randall et al., 1 Deady, 557; 20 Fed. Cas. 222.

A voluntary assignment by a debtor under state laws, though made in good faith and embracing all of his property, and made for the equal benefit of all his creditors, was held to be an act of bankruptcy under the Act of 1867. Cragin v. Thompson, 2 Dill. 513; 6 Fed. Cas. 408.

Ten months before filing his petition in bankruptcy, the bankrupt, being then unable to pay his debts, and having been sued for the same, made a general assignment for the equal benefit of all his creditors. On examination, he swore that he had made the assignment in good faith and not in contemplation of bankruptcy; but the court held that the effect of the assignment being to hinder and delay his creditors, its execution was an act of bankruptcy, and a discharge was refused. In re Goldschmidt, 3 Ben. 379; 10 Fed. Cas. 564.

A chattel mortgage given to secure an existing indebtedness, with intent to hinder and delay other creditors, was held to constitute an act of bankruptcy within the Law of 1867. In re Cowles, 1 N. B. R. 280; 6 Fed. Cas. 672.

"Preferences through Legal Proceedings."

A warrant of attorney to confess judgment in contemplation of bankruptcy is not an act of bankruptcy unless the debtor procures judgment to be entered and an execution to be issued. Barnes v. Bellington, 1 Wash. C. C. 29; 2 Fed. Cas. 858 (1803).

It is not an act of bankruptcy to give a warrant of attorney for a consideration of equal value to the amount of the judgment confessed. In re Blabon et al. v. Hunt et al., 2 N. J. L. J. 179; 3 Fed. Cas. 493.

It was decided under the Act of 1841 that the giving of a power of attorney is not an act of bankruptcy unless done fraudulently, and that it was not fraudulent if given to a *bona fide* creditor, unless the debtor at the time contemplated an act of bankruptcy, or an application by himself to be declared a bankrupt. Buckingham v. McLean, 13 How. 151.

A warrant of attorney given to enable the debtor to continue his business, and without intent to defeat the operation of the Bankrupt Act, will not support a petition for an adjudication in bankruptcy. In re Leeds, 1 N. B. R. 521; 15 Fed. Cas. 239.

A confession of judgment for a present consideration followed by the issuance of an execution is not an act of bankruptcy unless the creditor has the assistance of the debtor. Clark v. Iselin, 21 Wall. 360.

To avoid "suffering his property to be taken on legal process," under the Act of 1867, it was necessary for a debtor when he was sued to defend the action, or file his petition in bankruptcy. Fitch et al. v. McGie, 2 Biss. 163; 9 Fed. Cas. 180.

There must be active co-operation on the part of the debtor in aiding another to obtain a judgment and levy an execution to make it an act of bankruptcy. Jones v. Sleeper, 2 N. Y. Leg. Obs. 131; 13 Fed. Cas. 1030 (1843).

Mere inactivity of a debtor in permitting judgment on an honest debt to be recovered, without having encouraged the suit, is not an act of bankruptcy. Order of adjudication reversed. Wright v. Filley, 1 Dill. 171; 4 N. B. R. 610; 30 Fed. Cas. 672 (1870).

It was held to be an act of bankruptcy for an insolvent firm to permit one of the partners to secure a judgment by default, though the firm was lawfully indebted to him. In re Black et al., 2 Ben. 195; 3 Fed. Cas. 495.

A. had secured a judgment in a state court against J., after which the latter conveyed all his real estate, of a value greater than the debt, to his sons. The court dismissed the petition of A. for an adjudication of bankruptcy against J., and held that A.'s remedy was to have the conveyance set aside in a court of equity. Avery v. Johann, 3 N. B. R. 144; 2 Fed. Cas. 251.

It was an act of bankruptcy under the Act of 1841 for a trader to procure himself to be arrested, or his goods to be attached. Wakeman v. Hoyt, 5 Law Rep. 309; 28 Fed. Cas. 1350 (1842).

Under the Act of 1841 it was held not to be an act of bankruptcy to permit a judgment to be entered in favor of a particular creditor, and an execution to be issued thereon, unless it was shown that the debtor was insolvent at the time. In re Bonnet, 1 N. Y. Leg. Obs. 310; 3 Fed. Cas. 854 (1843).

Where the execution on a fictitious judgment rendered before the passage of the bankrupt law was, after the passage of the Act, levied on property of the alleged debtor, it was held that the debtor by failing to take steps to have the judgment set aside, was guilty, being insolvent, of suffering his property to be taken on legal process with intent to defeat or delay the operation of the Act, and had thus committed an act of bankruptcy. It was stated, however, that the plaintiff in the fictitious judgment could assert his rights, if any he had, in defending a suit to be instituted by the assignee in behalf of the bankrupt's estate. In re Schick, 1 N. B. R. 177; 21 Fed. Cas. 689 (1867).

A debtor who voluntarily aids a creditor in perfecting an attachment of his goods which was previously incomplete, committed an act of bankruptcy within the terms of the Act of 1841. Fisher et al. v. Currier et al., 5 Law Rep. 217; 9 Fed. Cas. 127 (1842).

A debtor, being insolvent, or contemplating insolvency, who fails to file a petition in voluntary bankruptcy, and whose property is levied upon, was held to have "suffered his property to be taken on legal process" within the meaning of the Act of 1867. In re Dibblee et al., 3 Ben. 283; 7 Fed. Cas. 651.

A creditor levied on the property of the bankrupt in such a manner as to give himself a preference over other creditors. He then set up these facts in a petition for involuntary bankruptcy, on the ground that the debtor had "suffered his property to be taken on legal process." It was held that the petition could be entertained. Coxe et al. v. Hale et al., 10 Blatchf. 56; 6 Fed. Cas. 689.

A debtor who procures the appointment of a receiver in a state court is chargeable with defeating and delaying the operations of the Bankrupt Act. In re Bininger et al., 7 Blatchf. 262; 3 Fed. Cas. 412.

The property of a debtor had been attached without his knowledge, and he had failed to have himself adjudged a bankrupt by voluntary proceedings. The court held that this omission could have no retroactive effect to supply the intent necessary to make the attachment an act of bankruptcy. In re Belden et al., 2 N. B. R. 42; 3 Fed. Cas. 82.

Proceedings to wind up the affairs of an insurance company under the laws of Illinois, and the appointment of a receiver, were held to be an act of bankruptcy as constituting a taking on legal process. The failure of the company to file a voluntary petition in bankruptcy was itself an act of bankruptcy, and the fact that the state court had first obtained jurisdiction of the parties and the property did not affect the jurisdiction of the court in bankruptcy. In re Merchants' Ins. Co., 3 Biss. 162; 17 Fed. Cas. 41.

When a debtor finds himself insolvent, it is his duty to file a petition in voluntary proceedings. Failing in that, if some of his creditors take

his property by attachment or execution, he may be adjudged a bankrupt for having suffered his property to be taken under legal process. In re Wells, 3 N. B. R. 371; 29 Fed. Cas. 637.

Proceedings were commenced under the laws of the state dissolving a corporation and appointing a receiver, who took possession of its property. It was held that this constituted an act of bankruptcy on the part of the company in suffering its property to be taken on legal process. In re Washingon Marine Ins. Co., 2 Ben. 292; 29 Fed. Cas. 365.

It was held not to be a suffering to take property under legal process for a debtor to remain passive during proceedings to collect a claim which was due, and to which there was no defense. National Bank v. Warren, 96 U. S. 539.

The district court of California decided that the decision of the supreme court in Wilson v. City Bank of St. Paul, 17 Wall. 84, did not apply to the case where a debtor, hopelessly insolvent, fails to apply for the benefit of the Bankrupt Act, and suffers certain creditors to appropriate all of his assets. Hyde v. Corrigan, 9 N. B. R. 466; 12 Fed. Cas. 1106.

Held, under the Act of 1867, that the entering of a judgment in pursuance of a warrant of attorney within two months before the filing of a creditor's petition is not an act of bankruptcy within the provision of the statute, Balfour v. Wheeler, 18 Fed. Rep. 893.

It was held to raise a presumption of fraudulent intent where a debtor gave a judgment note payable in one day with the right to issue execution therewith. Clarion Bank v. Jones, 21 Wall. 325.

The alleged bankrupt had made a confession of judgment to one of his creditors with intent to give him a preference. He was insolvent at the time, but did not know that there was such a thing as the bankruptcy law. This was held to come within section 39 of the Act of 1867 in that "he suffered his property to be taken on legal process." In re Craft, 2 Ben. 214; 6 Fed. Cas. 698.

Miscellaneous.

The giving of a chattel mortgage by an infant is not an act of bankruptcy, being subject to his election to confirm or disaffirm when he comes of age. In re Derby, 6 Ben. 232; 7 Fed. Cas. 513.

Judge Dillon held that "a person who is so unsound in mind as to be wholly incapable of managing his affairs cannot in that condition commit an act for which he can be forced into bankruptcy by his creditors against the objection of the guardian. Whether such person on the petition of himself or his guardian may, if insolvent, go into voluntary bankruptcy, the court gives no opinion." In re Marvin, 1 Dill. 178; 16 Fed. Cas. 927.

A corporation cannot commit an act of bankruptcy after being dissolved, and a receiver appointed. The collection, under legal process, of an asset of a corporation by such receiver, more than six months after the dissolution of the corporation, does not constitute an act of bankruptcy; and cannot be the cause of proceedings in bankruptcy. The

thirty-ninth section of the Act of 1867 required that the petition shall be brought within six months after the act of bankruptcy has been committed. In re New Amsterdam Fire Ins. Co., 6 Ben. 368; 18 Fed. Cas. 34.

An act which is not a fraud in itself may be a violation of the bankrupt law, because it seeks to evade or avoid its provisions. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

Upon the service of process in involuntary proceedings the alleged bankrupt indorsed on a copy of the petition an admission of the truth of the averments contained therein, except as to those charging fraud. Before the hearing, he filed his voluntary petition in the same court, and an adjudication was had. Subsequently the court held that the adjudication was of no effect, and entertained the proceedings in involuntary bankruptcy. In re Stewart, 3 N. B. R. 108; 23 Fed. Cas. 51

Where one partner procures another to leave the state, the latter, but not the former, commits an act of bankruptcy. In re Terry, 5 Biss. 110; 23 Fed. Cas. 852.

When a deposition is relied upon to prove an act of bankruptcy it must show the fraudulent intent of the debtor in making the conveyance complained of, but the omission can be supplied by a supplemental deposition. Cunningham v. Cady, 13 N. B. R. 525; 6 Fed. Cas. 966.

Effect will be given to the admission of a fact from which a fraudulent intent may be inferred, though the admission be qualified with a denial of such fraudulent intent. In re Sutherland, Deady, 344; 23 Fed. Cas. 454.

Held, under the Act of 1841, that it was not necessary that a preference should have been spontaneous to make it an act of bankruptcy. Van Kleeck et al. v. Thurber, 28 Fed. Cas. 1031 (1842).

Justice Hunt said that acts or omissions that might be evidence of insolvency or fraud in a strictly commercial community may possess less significance in the rural districts. Lakin v. First Nat. Bank, 13 Blatchf. 83; 14 Fed. Cas. 959.

A debtor who files a petition in voluntary bankruptcy thereby commits an act of bankruptcy, and a creditor cannot oppose the adjudication on the ground that he is really able to pay his debts. In re Fowler, 1 Low. 161; 9 Fed. Cas. 614.

Concealment of the debtor from creditors is not an act of bankruptcy, if it does not prevent the service of process. Barnes v. Bellington, 1 Wash. C. C. 29; 2 Fed. Cas. 858 (1803).

Only acts of bankruptcy which are set up in the petition can be proved on the hearing. Ex parte Shouse, Crabbe, 482; 22 Fed. Cas. 27 (1842).

Creditors are not protected by ignorance of the law when they have knowledge of facts showing that their debtor is insolvent. Martin v. Toof et al., 1 Dill. 203; 16 Fed. Cas. 907.

Under the Act of 1867 there could be a constructive fraud, consisting of a violation of the terms of the law, without an actual fraud under section 12. In re Riorden, 14 N. B. R. 332; 20 Fed. Cas. 820.

A mere omission by accident or mistake was held not to constitute a concealment within section 5021, R. S. In re Scott, 11 Fed. Rep. 133.

Insolvency alone is never an act of bankruptcy, and when an act of bankruptcy has been once committed, a debtor cannot be relieved from the legal consequences thereof except by lapse of time, or by arrangement with the creditors who have the right to sue on account of it. In re Ryan, 5 Leg. Gaz. 263; 21 Fed. Cas. 105.

(a.—2.) A large number of notes on the question what acts constitute a preference will be found under section 60.

(d.) For notes on the examination of bankrupts, see section 21.

[See notes to § 8.]

§ 4. **Who May Become Bankrupts.**— (a.) Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

(b.) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default of an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

(a.) Aliens residing in the United States were held to be entitled to the benefit of the Bankrupt Act of 1867. In re Boynton, 10 Fed. Rep. 277. So held also by Judge Lowell. In re Goodfellow, 1 Low. 510; 11 Fed. Cas. 594.

An infant is entitled to the benefit of a bankrupt act, and the petition may be filed in his own name. In re Book, 3 McLean, 307; 3 Fed. Cas. (1843).

Under the Law of 1867, a married woman might become a voluntary or involuntary bankrupt. In re Collins, 3 Biss. 415; 6 Fed. Cas. 113.

A debtor against whom involuntary proceedings had been commenced made a composition with his creditors, but was unable to carry it out, and it was set aside. Thereupon, he filed his voluntary petition, and a decree of adjudication was had. The court stayed the former, and proceeded with the voluntary proceedings. In re Flannigan, 5 Saw. 312; 9 Fed. Cas. 239.

A court of bankruptcy has no jurisdiction over a petition filed by an infant, or to confirm an adjudication of bankruptcy previously made on a petition filed after the infant comes of age. In re Derby, 6 Ben. 232; 7 Fed. Cas. 513.

(b.) It is generally true that proceedings in involuntary bankruptcy are proceedings *in rem*, and this is especially true where the bankrupt is a corporation. Platt v. Archer, 9 Blatchf. 559; 19 Fed. Cas. 822.

After an adjudication in bankruptcy by default, the bankrupt filed a petition claiming that he was insane when the debts of the petitioning creditor were incurred, and also at the time of the adjudication. The adjudication was set aside, and the bankrupt allowed to answer. In re Murphy, 10 N. B. R. 48; 17 Fed. Cas. 1030.

In a case where one of two partners filed a petition in voluntary bankruptcy and prayed that the other partner might be adjudged a bankrupt, alleging that he had refused to join in the voluntary petition, the court held that as to the latter the proceeding was one of involuntary bankruptcy. Midsker v. Bonebrake, 108 U. S. 66.

Judge Gresham held that in Indiana a petition in bankruptcy could not be sustained against a married woman having no separate property, inasmuch as she is still incompetent to contract by the laws of the state. In re Goodman, 5 Biss. 401; 10 Fed. Cas. 601.

Where by the laws of the state a married woman was liable to an action for indebtedness contracted by her while living separate and apart from her husband, she may be adjudged a bankrupt for such a claim. In re Lyon, 2 Saw. 524; 15 Fed. Cas. 1192.

A fire insurance company was held to be within the language of section 37 of the Act of 1867. In re Merchants' Ins. Co., 3 Biss. 162; 17 Fed. Cas. 41.

A railroad company is "a business corporation" within the meaning of section 37 of the Bankruptcy Act of 1867. Adams v. Boston, H. & E. R. R. Co., Holmes, 30; 1 Fed. Cas. 90; Ala. & C. R. Co. v. Jones, 5 N. B. R. 97; 1 Fed. Cas. 275.

Under the Act of 1867 the court of bankruptcy had authority to adjudicate a railroad company bankrupt, and to administer its property. New Orleans, etc., R. Co. v. Delamore, 114 U. S. 501.

It was held by District Judge Durell of Louisiana that railroad corporations, in their character as branches of the great system of internal commerce, were not within the province of the bankrupt law, and not liable to be adjudged bankrupts. In re Oplousa & G. W. R. Co., 3 N. B. R. 31; 18 Fed. Cas. 751 (1869).

Justice Clifford decided in the case cited that railroad companies, not being created for the administration of political or municipal authority, are private corporations; that congress has power to subject them to the provisions of a bankrupt act, and to authorize the transfer of their franchises. Sweatt v. Boston, H. & E. R. R. Co. et al., 3 Cliff. 339; 23 Fed. Cas. 530.

Notwithstanding the practical difficulties in the administration in bankruptcy of a railway company, such corporations are not excluded from the operation of the Bankrupt Act. Winter v. Railway Co., 2 Dill. 487; 30 Fed. Cas. 329 (1873).

A railroad corporation was held to be subject to the operations of the Bankrupt Act, notwithstanding its claim that it belonged to a system of state improvements, and could not be considered a private corporation. Rankins et al. v. Fla., A. & G. C. R. R. Co., 1 N. B. R. 647; 20 Fed. Cas. 274.

Under the Act of 1867, the petition for involuntary bankruptcy against railroad company which failed to allege in the terms of the act (§ 39) that the company was a "banker, broker, merchant, trader, manufacturer or miner" was held defective; no proof of such facts being offered, the petition was dismissed. Ala. & C. R. R. Co. v. Jones, 5 N. B. R. 97; 1 Fed. Cas. 275.

Proceedings in bankruptcy against a railroad company were dismissed where the stockholders, who had purchased all the outstanding indebtedness except a few small claims, desired it, and it appeared to be for the best interests of all parties. The court required, however, that the parties applying for the dismissal should give security for the payment of the objecting creditors. In re Indianapolis, C. & L. R. Co., 5 Biss. 287; 13 Fed. Cas. 27.

A state court had appointed receivers of an insurance company with authority to collect its assets, made perpetual an injunction against the further prosecution of business, and declared "that the said corporation be, and the same is hereby, dissolved." It was held that notwithstanding this action, proceedings in bankruptcy might be maintained. In re Independent Ins. Co., Holmes, 103; 13 Fed. Cas. 13.

The stockholders of a corporation had become individually liable for its debts under the provisions of the law of Rhode Island, and a judgment creditor filed a petition to have them adjudged bankrupts. The district court dismissed the petition, and the circuit court confirmed its decision, holding that the petitioner was restricted to the remedies provided by the law creating the liability. James v. Atlantic D. Co. et al., 11 N. B. R. 390; 13 Fed. Cas. 300.

That a corporation is not such as to be liable to bankruptcy proceedings is a fact that should appear by the pleading, and the objection is waived by an omission to so aver in the answer. In re Oregon Bulletin Printing Pub. Co., 13 N. B. R. 506; 18 Fed. Cas. 773 (1876).

Held, that the petition in bankruptcy must show that the alleged bankrupt corporation was such a corporation as was subject to adjudication under the terms of the bankrupt law. The omission of such averment renders the petition demurrable. Oregon Bulletin Printing Pub. Co., 3 Saw. 614; 18 Fed. Cas. 783.

[See notes under § 50.]

PARTNERSHIP.

§ 5. **Partners.**— (a.) A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(b.) The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

(c.) The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

(d.) The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

(e.) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(f.) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

(g.) The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(h.) In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

When and by Whom Proceedings may be Instituted.

Proceedings in bankruptcy may be maintained against a firm as long as there are undistributed joint assets, and joint liabilities. In re Gorham, 9 Biss. 23; 10 Fed. Cas. 823.

As long as there are partnership debts outstanding, a firm that has been dissolved is subject to joint adjudication. In re Williams et al., 1 Low. 406; 29 Fed. Cas. 1322.

The fact that one of the members of a firm has been adjudged a bankrupt will not prevent proceedings against the copartnership. Hunt et al. v. Pooke et al., 5 N. B. R. 101; 12 Fed. Cas. 930.

It was necessary, under the Act of 1841, that all members of a firm should unite in a petition in voluntary bankruptcy. Ex parte Hartz et al., 1 N. Y. Leg. Obs. 39; 11 Fed. Cas. 722 (1842).

On a voluntary petition in bankruptcy by a firm, the court can determine who constituted the firm, and such a determination will stand until it is set aside. In re Griffith et al., 18 N. B. R. 510; 11 Fed. Cas. 38.

As long as there is any unfinished business on the part of the firm, debts, or credits, or assets of any kind, it is within the province of the bankrupt court to settle it, and either of the partners, or a creditor, may come into the bankrupt court for that purpose. In re Noonan, 5 Chi. Leg. News, 557; 18 Fed. Cas. 298.

Persons who have been adjudged bankrupts as partners cannot thereafter be heard to deny that a partnership existed. In re Gilbert et al., 1 N. Y. Leg. Obs. 327; 10 Fed. Cas. 344.

A petition against a firm will not be dismissed because one of the partners dies after the filing but before adjudication. Hunt et al. v. Pooke et al., 5 N. B. R. 101; 12 Fed. Cas. 930.

The circuit court, affirming the district court, held that an adjudication of a firm in one district will not prevent proceedings in another district against another firm, some of the partners in which are members of the former firm. In re Jewett et al., 7 Biss. 473; 13 Fed. Cas. 591; s. c. in the district court, 7 Biss. 328; 13 Fed. Cas. 585.

A married woman had invested her separate property in a partnership. The court held that it was not necessary to make her husband a party to proceedings in involuntary bankruptcy against the firm. Lastrapes et al. v. Blanc et al., 3 Woods. 134; 14 Fed. Cas. 1164.

A court of bankruptcy will not entertain a petition by one member of a firm which is filed for the purpose of harassing his partner. In re Hamlin et al., 8 Biss. 122; 11 Fed. Cas. 369.

One of the members of a firm which has been dissolved, and its debts settled, cannot have an adjudication of bankruptcy against the firm on representations of his own fraud in making the settlement. In re Hamlin et al., 8 Biss. 122; 11 Fed. Cas. 369.

A firm of three members was dissolved by the retiring of one member. The others, after doing business for some time, filed their petition in bankruptcy. The third member objected to the proceedings, and it was held that the court had jurisdiction of the firm property on the petition of the two partners. In re Mitchell et al., 3 N. B. R. 441; 17 Fed. Cas. 491.

Under the Act of 1841 members of a dissolved firm could not apply for an adjudication in bankruptcy as to their joint debts where there was no partnership property within the jurisdiction of the court. Ex parte Hartz et al., 1 N. Y. Leg. Obs. 39; 11 Fed. Cas. 722 (1842).

A firm had been dissolved and one of the parties had assumed its debts and given a bond for their payment. Thereafter, he filed a petition against the firm. The creditors did not unite in the petition. The petition was dismissed. In re Bennett et al., 2 Low. 400; 3 Fed. Cas. 209.

Under the Act of 1867 the bankruptcy of one partner dissolved the partnership, and the assignee in bankruptcy became tenant in common

with the solvent partner as to the joint stock. Wilkins v. Davis, 2 Low. 511; 29 Fed. Cas. 1248.

A decree of bankruptcy against a member of a firm dissolves the partnership, and the partnership effects are vested in the assignee and the solvent partners as by a tenancy in common. Ex parte Norcross, 5 Law Rep. 124; 18 Fed. Cas. 300.

A partnership had been dissolved, and one of the partners had undertaken to pay all the firm debts, but this agreement had not been assented to by the creditors. It was held that he could maintain a petition to have himself and his copartner adjudged bankrupt. In re Stowers et al., 1 Low. 528; 23 Fed. Cas. 209.

Under the Act of 1867 the surviving partner could be adjudged a bankrupt for acts done respecting the assets of a former partnership, notwithstanding the individual estate of the deceased partner was sufficient to pay all the firm and personal debts. In re Stevens, 1 Saw. 397; 23 Fed. Cas. 4.

Where one partner obtained an adjudication against his firm which had been dissolved by the death of his copartner, it was held that the adjudication was void. In re Temple, 4 Saw. 92; 23 Fed. Cas. 835.

The business of a firm had been continued by the executors of a deceased partner. Proceedings in bankruptcy were commenced against the firm, and the real estate of the decedent sold. Held, that the purchaser acquired no valid title. Adams et al. v. Tarrell, 4 Fed. Rep. 796.

Proceedings in bankruptcy against a firm does not give the court jurisdiction over the separate estate of a deceased partner. So held under the Act of 1867 (section 12). Ibid.

There must be an adjudication of bankruptcy against partners composing a firm, and an assignee must be appointed in such proceeding, before any step can be taken to reach in bankruptcy the partnership assets. In re Sheppard, 3 Ben. 347; 2 N. B. R. 172; 21 Fed. Cas. 1256 (1869).

When one partner's petition to have the firm adjudged voluntary bankrupt on the ground of insolvency, and the other partner denying the fact of a partnership, a verdict is rendered that a partnership existed,—after adjudication and in proceedings for discharge, it was held that the resisting partner should be deemed a *voluntary* bankrupt. In re Wilson, 2 Low. 453; 13 N. B. R. 253; 30 Fed. Cas. 97 (1875).

When there are firm debts and firm assets the firm must be declared bankrupt by either voluntary or involuntary proceedings before any member of the firm can be discharged in bankruptcy from its liability. This does not apply to copartnerships previously terminated by bankruptcy, insolvency, assignment or otherwise. In re Winkens, 2 N. B. R. 349; 30 Fed. Cas. 302 (1869).

Where a petition against a firm named only two of three partners, it was held that the third partner could not be added, by amendment, after the testimony had been taken, and that no adjudication could be had against the firm. In re Pitt et al., 8 Ben. 389; 19 Fed. Cas. 745.

Partners have the right severally as well as jointly to institute voluntary proceedings in bankruptcy whereby they may be discharged from that partnership as well as their individual liability. In re Noonan, 5 Chl. Leg. News, 557; 18 Fed. Cas. 298.

A discharge in bankruptcy releases a member of a firm from his joint as well as his separate debts, and his partners are bound by the discharge as well as joint creditors. Wilkins v. Davis, 2 Low. 511; 29 Fed. Cas. 1248.

When there are no partnership assets to be collected and paid out, one member of a former partnership may, upon his individual petition, be discharged from all his debts, partnership and private. In re Marx, 16 Fed. Cas. 763.

It was held under the Act of 1841 that a firm is liable to be adjudged bankrupts upon acts committed prior to the passage of the law. Ex parte How et al., 1 N. Y. Leg. Obs. 1; 12 Fed. Cas. 853.

On the motion of three bankrupts composing a firm for a discharge, creditors who opposed the discharge of two of them offered in evidence a decree in a suit brought against them by the assignee, and depositions by each of them in that suit; also proof of statements to other parties made by the third partner to the bankrupts. Judge Blatchford decided that each deposition was evidence against the deponent; that the decree was evidence against all of them, and that the deposition and statements of the third partner were not admissible against either of the other two. In re Leland et al., 8 Ben. 204; 15 Fed. Cas. 290.

It was competent for a court of bankruptcy under the Act of 1867 to adjudge a party a bankrupt both as an individual and as the surviving partner of a firm. Briswalter v. Long, 14 Fed. Rep. 153.

The fact that two firms were concerned together in a certain business enterprise and kept a joint account in bank did not establish a copartnership between them, so that the holder of one of their checks could file a petition in bankruptcy against the members of both. In re Warner et al., 7 N. B. R. 47; 29 Fed. Cas. 233.

Certain persons who had formed themselves into an association failed to comply with the laws of the state respecting corporations, but continued to do business as an association. It was held that they were liable as copartners, and that a creditor who had dealt with them in their supposed character as a corporation was not estopped from proceeding against them on their individual liability. In re Mendenhall, 9 N. B. R. 497; 17 Fed. Cas. 10.

A petition in bankruptcy against a firm was resisted by one of the alleged members on the ground that he was a special, and not a general partner. The proof was that he had contributed a sum of money and a stock of goods under an agreement with his copartners that he should be a special partner only. It was held that this did not comply with the laws of New York on the subject of limited partnerships, and that he must be treated as a general partner. In re Merrill et al., 12 Blatchf. 221; 17 Fed. Cas. 82.

An adjudication against the ostensible members of a firm is binding on the partnership property, notwithstanding a dormant partner is omitted. Metcalf v. Officer et al., 5 Dill. 565; 17 Fed. Cas. 174.

Where one partner files a petition that the firm be adjudged bankrupt, another partner may oppose the adjudication by showing that the firm is not insolvent. In re Fowler, 1 Low. 161; 9 Fed. Cas. 614.

A partnership creditor may proceed against one partner alone on a joint debt. In re Melick, 4 N. B. R. 97; 16 Fed. Cas. 1328.

A partnership consisting of husband and wife may be adjudicated bankrupts, and Judge Blodgett, of the district court of Illinois, intimated that there might also be an adjudication as to the wife individually. In re Kinkead, 3 Biss. 405; 14 Fed. Cas. 599.

One member of a firm sold out his interest to a third person. Thereafter, the remaining partner filed a petition asking for an adjudication as to the firm and each of its members. There was no joint property at the time of the application. It was held that section 36 of the Act of 1867 did not authorize such a proceeding as to the firm or the retired partner. In re Hartough, 3 N. B. R. 422; 11 Fed. Cas. 707.

One who was known to be a secret partner when the indebtedness was incurred may be adjudged a bankrupt on a petition against the firm, though entirely solvent, and though he had not himself committed any acts of bankruptcy. In re Ess et al., 3 Biss. 301; 8 Fed. Cas. 785.

A partner who has retired from the firm may, nevertheless, be adjudicated a bankrupt with the other partners when the business was conducted in the old name, and he permitted himself to be held out as a member of the firm. In re Krueger et al., 2 Low. 66; 14 Fed. Cas. 868.

C., S. and J. were members of a firm which had been dissolved. After dissolution, C. and S. filed a petition for an adjudication of bankruptcy of themselves and J. The only partnership asset was a right of action for an alleged tort. Held, under section 14 of the Act of 1867, that the claim was not one that passed to the assignee, and that the petition must be dismissed as to J. In re Crockett et al., 2 Ben. 514; 6 Fed. Cas. 836.

Under the Act of 1867 it was held that the adjudication of a member of a firm, and of the firm, must be made on one petition, and that two petitions for such purpose could not be consolidated. In re Plumb, 9 Ben. 279; 19 Fed. Cas. 886.

When there are no assets of a copartnership to be administered, a member of a late copartnership may, upon his individual petition, be discharged from all his debts, copartnership as well as individual. In re Abbe, 7 A. L. Reg. (N. C.) 824; 1 Fed. Cas. 3.

When a member of a firm is discharged on his individual petition he is not released from the partnership debts. Hudgins v. Lane et al., 2 Hughes, 361; 12 Fed. Cas. 800.

One member of a firm filed a petition in bankruptcy and took up on his schedules the assets and liabilities of the firm. An application of another partner to be made a party to these proceedings, and to have the firm adjudged bankrupt was allowed. In re Gorham, 9 Biss. 23; 10 Fed. Cas. 823.

A creditor petitioned for an order to compel the bankrupts, who were partners, to amend their petition by including others who were alleged to be copartners. The petition was dismissed, the court saying that it was an attempt under the guise of voluntary bankruptcy to accomplish involuntary bankruptcy. In re Harbough et al., 15 N. B. R. 246; 11 Fed. Cas. 476.

After adjudication the bankrupt and his assignee filed a petition setting up that the bankrupt was a member of a firm with debts and assets, and praying that the other members might be brought in, and an adjudication had as to the firm. The court refused to dismiss the petition summarily, and ordered the other partners to answer. In re Kelley, 19 N. B. R. 326; 14 Fed. Cas. 236.

The court allowed a petitioner in voluntary bankruptcy to amend his petition so as to make it cover partnership as well as personal debts. In re Bidwell, 2 N. B. R. 229; 3 Fed. Cas. 388.

Where only one partner had signed a petition under the Act of 1867, Judge Drummond said: "There is nothing that I can see in the bankrupt law to prevent one partner from making his application for a discharge under the law from his individual debts, and from his debts as a copartner of a firm. It seems to be desirable that the nonjoining partner should know that the application is made, leaving it optional that he come in if he pleases, or take any action he may choose. * * * The law does not require, nor does the rule (Rule 18) — and in fact the law seems to be otherwise — that before a member of a firm can be discharged under the bankrupt law, he must request the other members of the firm also to apply. The rule seems to give the option to that member of the firm who does not apply to join in the application and declares what the consequences shall be to nonjoinders. * * * Of course the petition must be amended and ask that the firm be declared bankrupt." In re Moore et al., 5 Biss. 79; 17 Fed. Cas. 661.

The interest of one of the members of a limited partnership was purchased by the other members. The other members having been adjudicated bankrupts, it was held that the assignee had no claim against the former partner. Wight v. Condict, 154 U. S. 666.

The firm of W. & N. bought out the firm of W. & B. and assumed its debts. W. & N. filed a voluntary petition, and asked that B. be included in the decree. The court held that this could not be done. In re Wallace et al., 12 N. B. R. 191; 29 Fed. Cas. 67.

It is unnecessary to enumerate in detail the effects of the bankrupt partner in the petition. It is more convenient that this be done subsequently before a commissioner. Ex parte Norcross, 5 Law Rep. 124; 18 Fed. Cas. 300 (1843).

On the petition of a bankrupt who was a member of two firms, the court held that it had jurisdiction of his petition in favor of himself, and as against his copartners, to adjudicate upon himself and the firms. In re Smith, 16 Fed. Rep. 465.

Administration of Joint and Separate Estates.

It was held that if one member of a firm applied for the benefit of the Bankrupt Act of 1841, if the firm were insolvent, the assignee took all of its effects. McLean v. Johnson et al., 3 McLean, 202; 16 Fed. Cas. 251 (1843).

Creditors of a firm, one member of which is dead, can enforce, by proceedings in bankruptcy, the equitable obligation of the survivor to apply the joint estate to the payment of the partnership debts. In re Clap, 2 Low. 168; 5 Fed. Cas. 814.

Under the Act of 1841, where a firm and the individual members were bankrupts, the adjudication went against all of them, and their joint and separate property passed to the assignees. Fisher et al. v. Currier et al., 5 Law Rep. 217; 9 Fed. Cas. 127 (1842).

An adjudication of one of the members of a firm upon his own petition does not give the assignee any title to the property of the firm. Hudgins v. Lane et al., 2 Hughes, 361; 12 Fed. Cas. 800.

An assignee cannot deal with the joint property of a firm unless all the members are adjudged bankrupt. Crompton et al. v. Conkling, 9 Ben. 225; 6 Fed. Cas. 848.

The fact that one partner is solvent while the others are insolvent does not entitle him to take goods out of the possession of the bankrupt court, such possession being acquired through proceedings in bankruptcy against the insolvent partners. In re Shannahan, 6 Biss. 39; 21 Fed. Cas. 1153 (1874).

It was held under the Act of 1800 that where a separate commission was issued against one partner, only his interest in the partnership property passed to the assignee. Harrison v. Sterry, 5 Cranch, 289.

A debtor who was a member of two firms filed his individual petition in bankruptcy, entering on his schedules the assets and liabilities of both firms. After he had been adjudicated a bankrupt, the assignees petitioned the court to adjudge the two firms bankrupt. The other partners opposed the proceeding, and denied that their firms had committed any act of bankruptcy. The court granted the motion of the assignees, holding that the separate petitioner could not be discharged of a portion of his liabilities merely, but if at all, it must be of all of them; and that this could not be done unless the debts of both firms of which he was a member were paid, or the firm assets administered in the court of bankruptcy. In re Grady, 3 N. B. R. 227; 10 Fed. Cas. 904.

The bankrupts were a firm that had in its hands assets of prior firms in which the plaintiff was a partner. After nearly two years he demanded of the assignee in bankruptcy an account of his interest in the old firm. Ten years later, he brought this action to assert his right to administer its assets as the sole solvent partner. It was held that his right of action was barred by laches and by section 5057, Revised Statutes. Vetterlein v. Barnes, 6 Fed. Rep. 603.

Under the laws of Massachusetts respecting limited partnerships, the court held that where the general partner in such a firm became bank-

rupt, and the assets were not sufficient to pay the joint debts, his assignee could recover from the special partner such sums as had been withdrawn by him during the continuance of the firm. Wilkins v. Davis, 2 Low. 511; 29 Fed. Cas. 1348.

Where one partner becomes bankrupt, his assignee only takes that portion of the partnership assets which would belong to the bankrupt after payment of all the partnership debts; the solvent partners having a lien on all the partnership assets for the firm debts, and also for their own shares thereof before the separate creditor of the bankrupt can take anything. Parker v. Muggridge, 2 Story, 334; 18 Fed. Cas. 1148 (1842).

A firm was dissolved and the property divided between the partners. One of them sold an interest in his share to a third person and formed a partnership with him. The new firm contracted debts and became bankrupt. Before the adjudication a creditor of the old firm attached their property. It was held that the assignee in bankruptcy was entitled to the joint property of the new firm for the benefit of its creditors, and that only the balance was subject to attachment by creditors of the old firm. Crane v. Morrison et al., 4 Saw. 138; 6 Fed. Cas. 757.

When one member of a firm, who is in possession of its assets, becomes bankrupt, they are not assets in the hands of the assignee, and if he gains possession of them he must account for the proceeds to the creditors of the firm. Jones et al. v. Newson et al., 7 Biss. 321; 13 Fed. Cas. 996.

Under the Act of 1867 a creditor who had proved a debt against one member of a firm only could not participate in the election of an assignee for the firm. In re Phelp et al., 1 N. B. R. 525; 19 Fed. Cas. 436.

Under the Act of 1867, in the case of the separate bankruptcy of one member of a firm, a joint creditor had a right to prove his joint debt, and vote for assignee. In re Webb, 4 Saw. 326; 29 Fed. Cas. 495.

Distribution of Assets, Etc.

Where an individual partner fraudulently drew and deposited checks, and hypothecated them as securities for the benefit of the firm without first receiving the proceeds of such checks and hypothecations, the firm is liable for conversion. In re Ketchum et al., 1 Fed. Rep. 815.

Where the members of a firm, more than four months before the commencement of proceedings in bankruptcy, conveyed to one partner all of their property, both joint and several, and he assumed the debts of the firm, it was decided that all the assets should be treated as the separate assets of such partner. In re Collier et al., 12 N. B. R. 266; 6 Fed. Cas. 107.

One partner gave another, whose interest he purchased, a bond and security to relieve him from the debts of the firm. The outgoing partner having been discharged under the Bankrupt Act of 1841, could still enforce the obligation to pay the partnership debts, and so also could the creditors for whose benefit the obligation was given. Hood v. Spencer et al., 4 McLean, 168; 12 Fed. Cas. 459.

The assignee sought to have the proof of a claim expunged on the ground that the alleged creditor was a partner of the bankrupt. In denying the motion, the court said that one could be heard to deny his membership of a firm in the absence of conduct so open and notorious that all the creditors believed him to be a partner, and gave credit to the firm on the strength of that belief. In re Goold, 2 Hask. 34; 10 Fed. Cas. 761.

The creditors of a firm have the first right to be paid out of the partnership estate, and equity will give relief against an attempt to defeat this right by transferring all the partnership assets to one member of the firm. Collins et al. v. Hood, 4 McLean, 186; 6 Fed. Cas. 129 (1846).

A partnership debt is not entitled to a dividend out of the individual assets until the individual debts are paid in full. In re Hollister, 3 Fed. Rep. 452.

The bankrupt law provides for the primary payment of firm debts out of the partnership assets, and of individual debts out of the separate assets of each partner; but it does not prescribe any rule or furnish any method for ascertaining the character of distributable assets. In re Zug, 16 N. B. R. 280; 30 Fed. Cas. 947 (1877).

In this case title to real estate used for firm purposes and purchased with the firm's money was held in the proportion of four-fifths in one partner and one-fifth in another. Held, that agreeably to the law of Pennsylvania relating to real estate, the proceeds of the land in question should be regarded as assets of the individual members of the firm, and should be distributed accordingly. Ibid.

It was decided under the Act of 1867 that where partners filed separate petitions, separate creditors have the first right in the distribution of the separate assets, whether there were any partnership effects or not. In re Morse, 13 N. B. R. 376; 17 Fed. Cas. 852.

Under the Act of 1800 a creditor of a partnership could prove a joint debt under a separate commission against one of the partners and receive a full dividend. The court further held that the joint creditor could only be prevented from receiving his full dividend until the joint effects were exhausted by the intervention of equity. Tucker v. Oxley, 5 Cranch, 35.

Justice Story used this language: "The whole fund in court belongs to the separate estate of the bankrupt W., and, of course, upon general principles of law as well as the positive enactment of the fourteenth section of the Bankrupt Act of 1841, chapter 9, the whole is in the first instance to be applied to the payment of the debts due from him, and proved by his separate creditors; and as there is no surplus, joint creditors of the firm of which W. was a partner can take nothing." In re Williams, 5 Law Rep. 402; 29 Fed. Cas. 1321 (1842).

Three of four partners settled by composition with the creditors of the firm. The fourth member was afterward, in another proceeding, adjudged a bankrupt. It was held that the firm creditors were not entitled to share in the assets of the bankrupt on a footing with separate creditors, except as to the firm's paper on which the bankrupt was individually bound as indorser. In re Adams, 29 Fed. Rep. 843.

M. and S. were partners in a store. M. purchased the interest of S., including bills receivable, and agreed to pay the debts of the firm. For more than a year thereafter he continued the business, buying a new stock, which was mingled with the old, and selling from both. He was then adjudged a bankrupt. The court held that the bankrupt's effects were to be regarded as his separate estate and subject to the payment of his individual debts before any payments could be made on account of the old firm. In re Montgomery, 3 Ben. 567; 17 Fed. Cas. 618.

The assets of a partner who continued to conduct the business under the firm name after dissolution, with the consent of his copartner, will be treated as joint assets. In re Morse, 13 N. B. R. 376; 17 Fed. Cas. 852.

The surviving member of a firm continued to carry on the business after the death of his copartner, and with the consent of the latter's administrators. After continuing the business for some time, he was adjudged a bankrupt, and an assignee appointed to take possession of the property. It was held that the creditors whose claims had accrued before and after the death were entitled to share *pro rata* in the funds in the hands of the assignee; also that the administrators might prove against the estate of the surviving partner any claim they might have for the interest of the decedent in the copartnership. In re Mills, 11 N. B. R. 74; 17 Fed. Cas. 394.

Where the members of a firm after dissolution continue to treat each other as partners, such a dissolution can have no effect upon the rights of the creditors. In re McFarland, 10 N. B. R. 31; 16 Fed. Cas. 89.

When the business of a dissolved partnership is continued in the firm name without change, and no notice is given of the dissolution, the property of the partnership will be treated in bankruptcy as assets of the firm. In re Tomes et al., 19 N. B. R. 36; 24 Fed. Cas. 24.

A bankrupt firm had advanced money to an individual member beyond his share of the capital. The court allowed the assignee in bankruptcy to prove the claim of the firm against his separate estate, but restrained the assignee from applying any portion of his separate estate to the payment of the firm debt until all his separate creditors were fully satisfied. In re McLean et al., 15 N. B. R. 333; 16 Fed. Cas. 240.

Two of the members of a firm had received its assets and assumed its debts. The creditor proved his claim in bankruptcy against these members of the firm, and shared in the dividends from their estate. He was allowed to prove the balance of his claim against the other partner in bankruptcy, and share equally with the other creditors of the latter. In re Pease, 13 N. B. R. 168; 19 Fed. Cas. 68.

A partner having sued for a dissolution of the firm, and proceedings in bankruptcy having been begun against the firm, the partner could only claim, on the dissolution, his individual property, which would pass to the assignee for the payment of his personal debts. In re Clark et al., 4 Ben. 88; 5 Fed. Cas. 835.

Where all the partners are the same, and they carry on the same business under different partnership names, they are the same firm, and the

assets of both nominal firms are equally applicable to the payment of all creditors. In re Williams et al., 3 Woods. 493; 29 Fed. Cas. 1329.

Though the English courts have ruled to the contrary, it was held in this country under the Act of 1841 that where a firm and the several members thereof were declared bankrupt, a creditor who held a bill of exchange drawn by the firm and indorsed by one of the partners could share in dividends both from the joint estate of the firm and the separate estate of such partner. In re Farnum et al., 6 Law Rep. 21; 8 Fed. Cas. 1057 (1843).

One of four partners paid the entire indebtedness of the firm. Two of the other partners were insolvent, and the third was in bankruptcy. The partner who had paid the firm's debts was allowed to prove one-half of the amount paid against the bankrupt partner. In re Dell, 6 Saw. 344; 7 Fed. Cas. 415.

The holder of a draft drawn by one firm and accepted by another, where both were adjudged bankrupts, cannot share equally with the individual creditors in the separate assets of one who was a partner of both firms. In re Dunkerson et al., 4 Biss. 277; 8 Fed. Cas. 54.

"Although, in the distribution of the general assets of a bankrupt, the partnership assets are to be first applied to the partnership debts, and the individual assets of any separate partner first applied to his individual debts, according to the terms of the bankrupt law, yet when a judgment has been obtained by a partnership firm against the members of a concern, such judgment operates as a several lien against the real estate of each partner, and if prior in point of time, a judgment obtained against an individual creditor of such partner is to be preferred to such subsequent judgment; but the court is further of the opinion that when such partnership creditor can get satisfaction of any part of said judgment out of the partnership assets, the *pro rata* distribution to which such partnership creditor is entitled out of the partnership fund shall be first applied as a credit on said judgment against the separate partner, in relief of the fund of such separate partner for the benefit of the separate creditors." In re Lewis, 2 Hughes, 320; 15 Fed. Cas. 455.

Where the individual creditor of two partners obtains separate judgments against each, and under executions thereon purchases the interest of each in the partnership before the commencement of proceedings in bankruptcy, it was held that the right of the assignee in bankruptcy of the partnership was superior to that of the execution creditor, and that the joint debts of the partnership had priority and must be first paid out of the partnership property. Osborne v. McBride, 16 N. B. R. 22; 18 Fed. Cas. 842 (1876).

A firm consisting of two partners dissolved the partnership and subsequently formed another partnership. It was held by Judge Blatchford that creditors of the first partnership were not entitled to prove their debts against the subsequent bankrupt firm. Debts against the old dissolved firm are debts against each partner separately, and are not debts against the subsequent copartnership. See section 5121, R. S., title "Bank-

ruptcy" of the Act of 1867. In re Nims, 16 Blatchf. 439; 18 Fed. Cas. 255.

It was held that under the laws of Illinois a husband and wife might be partners in business. In the case of such a firm, the joint creditors are entitled to be paid out of the partnership assets in preference to the individual creditors of the husband. In re Kinkead, 3 Biss. 405; 14 Fed. Cas. 599.

Where one member of a firm has no individual debts, creditors of the firm are entitled to his individual assets, and also to appear in opposition to a discharge. In re Leavitt, 1 Hask. 194; 15 Fed. Cas. 122.

Two merchants united their stock of goods and agreed that their separate debts should be assumed by the firm thus organized. Subsequently they became bankrupt. It was held that a separate creditor who had not consented to the arrangement, could not prove his claim against the joint estate. In re Isaacs et al., 3 Saw. 35; 13 Fed. Cas. 148.

Separate creditors are not entitled to interest on their claims after adjudication as against joint creditors. In re Benson et al., 16 N. B. R. 75; 3 Fed. Cas. 255. (Following the supreme court of Massachusetts in Thomas v. Minot, 10 Gray, 263.)

The interest of members of a firm individually is only in the surplus after the payment of the partnership debts. In re Corbett, 5 Saw. 206; 6 Fed. Cas. 528.

A creditor of a firm cannot participate in the individual assets of a bankrupt partner until his separate creditors are paid, if the other partners are solvent. In re Dunham, 1 Hask. 495; 8 Fed. Cas. 35.

All the debts of a partnership must be paid before a member of the firm can claim payment of a debt that accrued to him in the course of the business of the copartnership. Cory v. Clark, 2 N. J. Law J. 122; 6 Fed. Cas. 606.

The assets of a firm will be applied to the payment of its debts without regard to the proportion in which the several partners have contributed to its capital. In re Low et al., 11 N. B. R. 221; 15 Fed. Cas. 1015.

A partnership was formed between a father and his infant son. The father furnished the stock in trade, and the son was to contribute his services, and each was to have a half interest. The original stock being exhausted, new goods were purchased. The court held that the new stock could not be seized by the father's creditors, but must be applied to the debts of the firm. In re Minor, 11 Fed. Rep. 406.

D. was a member of the firms of D. & Co. and B. & D. The debts of the former firm exceeded its assets, but D. owned property in excess of his personal debts. B. & D. owed a bank over $16,000. The court ordered that the distribution be made as follows: That the personal debts of D. be paid out of his individual assets; that the joint assets of D. & Co. be distributed *pro rata* to the creditors of the firm, and that the individual assets of D., after satisfying his personal debts, should be distributed among all the creditors who had proved their claims and to whom D. at the time of the filing of the petition in bankruptcy was liable as a member of either firm. In re Dunkerson et al., 4 Biss. 323; 8 Fed. Cas. 55.

One partner sold out his interest to another and assumed the firm debts. He continued the business, and added to his stock by purchases. Proceedings in bankruptcy having been commenced, it was held that the joint creditors of the firm should share equally with the individual creditors without showing that they had first exhausted the personal estate of the retiring partner. In re Rice, 9 N. B. R. 373; 20 Fed. Cas. 654.

When the assets of a bankrupt firm are absorbed in the payment of costs, joint and separate creditors must share equally in the separate assets of the several partners. In re McEwen et al., 6 Biss. 294; 16 Fed. Cas. 82.

The members of a firm having been adjudged bankrupts, and a creditor holding their joint bond having proved his claim against them separately and not against the firm, the assets of the partnership not being sufficient to pay its debts, it was held that the creditor could receive a dividend out of the separate assets of the individual bankrupts. In re Bigelow et al., 3 Ben. 146; 3 Fed. Cas. 345.

Creditors of a firm having a judgment against the two members of the firm jointly are not entitled to dividends in bankruptcy against the separate estate of each bankrupt *pari passu* with the separate creditors of each bankrupt. In re Berrian et al., 6 Ben. 297; 3 Fed. Cas. 283.

C. had received a discharge on proceedings in involuntary bankruptcy against him alone. C. and H., as a firm, had given a promissory note in the firm name. A suit was commenced against them on the note, and C. set up his discharge in defense. It was held that if there was no partnership property, the discharge of C. released him from the debts of the firm; otherwise not. Crompton et al. v. Conkling, 9 Ben. 225; 6 Fed. Cas. 848; Crompton v. Conkling et al., 15 N. B. R. 417; 6 Fed. Cas. 850.

The firm had been dissolved, and one of the partners agreed to pay all of its debts. The partners were put into bankruptcy separately, and there were no joint assets. Held, that the firm creditors and the creditors of the partner who had assumed the debts were entitled to share equally in the estate of such partner. In re Downing, 1 Dill. 33; 7 Fed. Cas. 1005.

The bankrupt's personal debts had been contracted on the strength of property invested in a partnership. The firm conveyed its property by a deed of trust to secure its indebtedness, and the bulk of the property was sold, but the partnership was not formally dissolved. Later, the bankrupt filed his petition. The court decided that the individual and copartnership creditors of the bankrupt should share equally. In re Goedde et al., 6 N. B. R. 295; 10 Fed. Cas. 524.

Where a firm received the consideration for a note, but it was signed by the partners individually, it was held that the holders were entitled to dividends out of their separate estates. In re Bucyrus M. Co., 5 N. B. R. 303; 4 Fed. Cas. 584.

Where there are no firm assets, and the partners are all insolvent, the debts of the firm and of the individual members can be proved and both classes of creditors will share equally in the estate. In re Knight, 2 Biss. 518; 14 Fed. Cas. 752.

"When a debt from one partner to the firm was incurred by the consent or privity of the other partners, proof of the joint creditors against the separate estate will not be admitted in a court of bankruptcy." In re McEwen et al., 6 Biss. 294; 16 Fed. Cas. 82.

The claimant had obtained a divorce from her husband, and he and his partner had executed a bond for the payment of alimony. It was held that she was not entitled to be paid from the firm assets as against firm creditors. In re Roddin et al., 6 Biss. 377; 20 Fed. Cas. 1084.

J. bought the interest of his partner in the firm of J. & B., which was indebted for some of the goods so sold to J. The firm had no assets. Proceedings of involuntary bankruptcy having been commenced against J., it was held that the creditors of the partnership were entitled to share on equal terms with the individual creditors. In re Jewett, 1 N. B. R. 491; 13 Fed. Cas. 583. In a later case growing out of the same bankruptcy, it was held that B. could not receive dividends from the assignee on the notes which he received for his interest in the firm, until all the partnership debts were paid. In re Jewett, 1 N. B. R. 495; 13 Fed. Cas. 594.

The estate of the firm was exhausted in the expenses incurred in collecting it. The court decided, under section 36 of the Act of 1867, that the firm creditors could share equally with the individual creditors in the individual estate. In re Slocum et al., 22 Fed. Cas. 328.

The rule that firm assets shall be first applied to the payment of firm debts, and individual assets to the payment of individual debts, except that when there are no firm assets the firm creditors shall share equally with individual creditors in the individual assets, applies where petitions have been filed against the partners separately. When firm assets are only sufficient to pay the costs and expenses of the proceeding, firm creditors have a right to share with individual creditors under the above rule; but neglect by the firm creditors to avail themselves of a fund whereby it was dissipated deprives them of this right. In re Litchfield, 5 Fed. Rep. 47.

While joint creditors have priority over separate creditors in firm assets, and separate creditors over joint, as to the individual assets of partners, yet when there are no partnership assets, the firm creditors are entitled to share in the separate assets; and where one partner has assumed the firm debts the firm creditor may share in his estate equally with separate creditors. In re Lloyd, 22 Fed. Rep. 28.

Construing the Act of 1867 (sections 5075 and 5121, R. S.), Judge Deady held that the property of a partnership is to be first applied to a payment of the partnership debts, and the property of each partner to the payment of his individual debts. In re Estes et al., 3 Fed. Rep. 134.

Section 14 of the Act of 1841 was held to be simply the rule of equity as to the distribution of the assets of a partnership, and the individual members. In re Warren, 2 Ware, 322; 29 Fed. Cas. 266 (1847).

Held, under the Act of 1867, that the rule that the property of a firm must be applied to the partnership debts, and the separate estate of the

partners to their individual debts, only applies when the joint estate as well as the separate estate is before the court for distribution. U. S. v. Lewis et al., 13 N. B. R. 33; 26 Fed. Cas. 920.

In proceedings against a partnership, joint and individual assets are separate funds for the payment of joint and personal creditors respectively. Where there are balances of the separate estates, they should be added to the joint estate for the payment of joint creditors, and after these have been paid, if any balance remains, it should be divided among the partners. In re South Boston Iron Co., 4 Cliff. 343; 22 Fed. Cas. 812.

Held, under the Act of 1867, that firm creditors cannot share in the individual estate of bankrupts when there are partnership assets. In re Smith et al., 13 N. B. R. 500; 22 Fed. Cas. 402.

A firm "jointly and severally" guaranteed the payment of an obligation. On the question whether it could be proved against the joint estate in bankruptcy, the court said: "The creditors are at liberty, therefore, to go to proof to show the liability of the bankrupt to the creditor to have been of a partnership character, and proceedings on the dividend will be stayed until the report of the commissioner and the judgment of the court thereon." Ex parte Miller, 1 N. Y. Leg. Obs. 38; 17 Fed. Cas. 292 (1842).

Act of 1841 construed. The provision devoting joint assets to firm creditors and separate estate to separate creditors was held not to apply where there were no joint assets. In re West, 39 Fed. Rep. 203.

If there is any balance of partnership assets after deducting its share of the costs of the proceedings, the partnership creditors cannot share *pari passu* with the individual creditors in the distribution of the separate estates. In re Blummer, 12 Fed. Rep. 489.

Where there are assets of a firm, the adjudication of a member of the copartnership does not discharge him from the firm liabilities. In re Plumb, 9 Ben. 279; 19 Fed. Cas. 886.

Real estate purchased with partnership funds is treated as personal property, and is subject to the payment of firm debts as against a judgment creditor of an individual member of the firm. Marrett v. Murphey et al., 11 N. B. R. 131; 16 Fed. Cas. 782.

Section 36 of the Act of 1867 contemplated that assets were to be marshaled between the joint and separate creditors of partners only when there were joint and separate assets, and proceedings had been instituted against the firm and the individual members. In re Downing, 1 Dill. 33; 7 Fed. Cas. 1005.

A partnership desiring an extension of time, the individual members of the firm agreed to convey land to the creditor, the same to be sold and applied to the debt. The firm becoming bankrupt, it was held that the agreement was simply a security for the original firm debt, and that the debt was provable against the firm, and was not an individual debt. Gauss v. Schrader, 48 Fed. Rep. 816.

Where there are both joint and separate debts proved on a separate petition, the latter must be paid first. In re Byrne, 1 N. B. R. 464; 4 Fed. Cas. 951.

Where there are firm assets, the creditors of a partnership cannot be allowed to prove their debts against the separate estate of a partner; and this is true without regard to the amount of the assets, or how they were produced. So held under the Act of 1841. In re Marwick, 8 Law Rep. 169; 16 Fed. Cas. 929 (1845).

The holder of commercial paper signed by a firm and indorsed by one of the members can prove his debt in bankruptcy against both the firm and the individual indorser, and share in the dividends of each estate. Emery et al. v. Canal N. Bank, 3 Cliff. 507; 8 Fed. Cas. 644.

A firm creditor is not estopped from asserting the liability of a special partner by an adjudication against the firm and the members in whose name the firm conducted its business. Abbendroth v. Van Dolsen, 131 U. S. 66.

An accommodation note indorsed by one member of a partnership for the benefit of a third person without the knowledge or consent of the other partner cannot be proved up against the firm. In re Irving et al., 17 N. B. R. 22; 13 Fed. Cas. 110.

A party purchased a note of a firm, and afterward proved it as a claim in bankruptcy against the signers alone. It was held that he could not recover from secret partners who belonged to the firm without his knowledge at the time of the purchase. In re Munn, 3 Biss. 442; 17 Fed. Cas. 989.

A decree had been entered against a firm upon a joint obligation as sureties for a debt, and it was paid out of the firm assets. Later, the firm was dissolved, and one of the partners was indebted to another. The debtor partner having gone into bankruptcy, the solvent partner sought to be subrogated to the rights of the creditor of the firm under the decree mentioned against the individual estate of the bankrupt partner. Held, that he could not be subrogated. In re Smith, 16 N. B. R. 113; 22 Fed. Cas. 408.

The bankrupts carried on business in different places under different names. Held, that the two firms were to be treated as one; that no notice was to be taken of the indebtedness of one firm to the other, and that the proceeds of the separate estates of the partners, after paying their individual debts, were to be added to the joint stock. In re Vetterlein et al., 5 Ben. 311; 28 Fed. Cas. 1170.

In a case where a trust fund had been invested in a partnership business, the copartner of the executor having knowledge of the source of the money, the court used this language: "When the copartnership as such received and used the fund with full knowledge of its character, the partnership became liable therefor. The creditors or beneficiaries could, therefore, pursue one or the other; the only doubtful proposition is whether they can pursue both." It was thereupon held that the parties entitled to the fund could prove their debts against the partnership, notwithstanding they had already proved it against the executor. In re Tesson et al., 9 N. B. R. 378; 23 Fed. Cas. 866.

Judge Bond held that a party holding the note of a firm indorsed by one of its members may prove his claim against both, and elect out of which fund it will be paid. Stephenson v. Jackson, 2 Hughes, 204; 22 Fed. Cas. 1307

Where the consideration for a note is treated as copartnership funds, it is a liability of the firm, though signed by the members with their individual names. In re Thomas et al., 8 Biss. 139; 23 Fed. Cas. 923.

Under the Law of 1867 a joint creditor could prove his debt against the separate estate of the bankrupt, vote for assignee, examine the debtor and appear in opposition to his discharge. He could not, however, participate in the distribution of separate assets as against separate creditors. Wilkins v. Davis, 2 Low. 511; 29 Fed. Cas. 1348.

[For notes on the jurisdiction of courts of bankruptcy over partnerships as dependent on residence or place of business, see section 2.]

EXEMPTIONS.

§ 6. **Exemptions of Bankrupts.**— (a.) This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Homesteads.

The rights of parties to a proceeding in bankruptcy are fixed as of the date of the adjudication; and if no homestead exemption could have been allowed at that time, the bankrupt could not claim any by virtue of subsequent laws. In re Kerr et al., 9 N. B. R. 566; 14 Fed. Cas. 386.

The right to a homestead exemption may be forfeited by fraud. So where merchants purchased an additional stock of goods, and then traded their whole stock for a house and lot, it was held that they could not claim the premises as a homestead as against the assignee in bankruptcy. Pratt et al. v. Barr, 5 Biss. 36; 19 Fed. Cas. 548.

The assignee in bankruptcy was ordered to intervene in a proceeding whereby the bankrupt had caused a homestead to be set apart to his family a few days before filing a petition, from which order an appeal was then pending. It was further decided that in the meantime the assignee could not take possession of the property. In re Moseley et al., 8 N. B. R. 208; 17 Fed. Cas. 886.

Property exempted as a homestead is not subject to the jurisdiction of a court in bankruptcy, and those who have claims against it must prosecute them in the state courts. This rule is not affected by the fact that the bankrupt had waived his right to the exemption. In re Bass, 3 Woods, 382; 2 Fed. Cas. 1004.

Where an assignee set aside certain property of the bankrupt as a homestead, and the bankrupt was not entitled to the exemption, the assignee was held responsible for his failure to sell the property for the

benefit of the creditors. In re Jackson et al., 2 N. B. R. 508; 13 Fed. Cas. 503.

Three days before a bankrupt firm went into bankruptcy, one of the partners took notes belonging to it and with them purchased a homestead. It was decided that he could not retain it as exempt. In re Boothroyd, 14 N. B. R. 223; 3 Fed. Cas. 872.

Where a creditor of the bankrupt was proceeding to sell certain real estate on an execution issued prior to the bankruptcy, the district court will not entertain a petition for an order setting it apart as a homestead, and an injunction against the sale of the property on the execution. The remedy of the bankrupt is in the state courts. In re Hunt, 5 N. B. R. 499; 12 Fed. Cas. 902.

It is sufficient if a bankrupt claims his homestead exemption when the assignee applies for an order to sell the property. Bartholemew v. West et al., 2 Dill. 290; 2 Fed. Cas. 963.

Under the laws of the state, the bankrupt was entitled to a homestead exemption to the value of $500. The assignee sold the farm belonging to the bankrupt, free from the homestead right. It was held that the bankrupt was entitled to $500 out of the proceeds. In re Beede, 19 N. B. R. 68; 3 Fed. Cas. 62.

A deed in which the wife joined, conveying the farm where the bankrupt resided, was set aside at the suit of the assignee in bankruptcy as a fraud upon creditors. It was held that the giving of the deed did not bar the right of the wife to dower, or the right of the bankrupt to his homestead exemption. Cox v. Wilder et al., 2 Dill. 45; 6 Fed. Cas. 684; reversing s. c. 5 N. B. R. 443; 6 Fed. Cas. 685.

When a debtor made a conveyance which was afterward set aside as a preference under the Bankruptcy Act of 1867, it was held that the right to a homestead and dower both revived. In re Detert, 11 N. B. R. 293; 7 Fed. Cas. 545.

It was held under section 14 of the Act of 1867 that the bankrupt is entitled to a homestead out of lands mortgaged by him to secure a loan. In re Brown, 3 N. B. R. 250; 4 Fed. Cas. 334.

The holder of a note waiving the exemption of a homestead must be paid out of the proceeds, if the homestead has been set apart without notice. In re Judkins, 2 Hughes, 401; 13 Fed. Cas. 1193.

Where the bankrupt's right of homestead in the property on which he resides is cut off by a mortgage, the court in bankruptcy can order the bankrupt to deliver possession to the purchaser on a foreclosure sale without requiring him to bring a suit in ejectment. In re Betts, 4 Dill. 93; 3 Fed. Cas. 314.

A conveyance by the bankrupt of property occupied as a homestead to a trustee for the benefit of his wife was void as against the creditors. The court held that it was, however, good as between the husband and wife, and that the latter was entitled to a homestead allowance out of the proceeds. Smith v. Kehr et al., 2 Dill. 50; 22 Fed. Cas. 584.

The humane policy of the exemption laws applies in bankruptcy. When, therefore, a state law allows a money exemption in lieu of homestead, a bankrupt partner should be allowed the same out of the assets of a bankrupt partnership. In the case cited District Judge Shuman gives his reasons for reversing his previous rulings on the question. In re Rupp, 4 N. B. R. 95; 21 Fed. Cas. 215 (1870).

The right of the wife and family to a homestead exemption is no title, lien or incumbrance upon the husband's property until it has been appropriated by a judgment. Hence jurisdiction over it passes, in case of bankruptcy of the husband, to the federal court. Woolfolk v. Murray, 10 N. B. R. 540; 30 Fed. Cas. 600 (1874).

The bankrupt having acquired a rural homestead, the fact that the land is subsequently included within the limits of a city by act of legislature cannot affect his homestead rights. In re Young, 15 N. B. R. 205; 30 Fed. Cas. 835 (1876).

A creditor having objected to the exemption of a homestead under the laws of the state on the ground that it exceeded in value the limitation of the statute, the court ordered it to be sold, the surplus in value above the limitation to be paid into the general fund. In re Watson, 2 N. B. R. 570; 29 Fed. Cas. 421.

Where a copartnership is insolvent, or is possessed of assets not more than adequate for the payment of its debts, one member of the firm, by retiring, cannot rightfully withdraw beyond the reach of creditors a portion of the assets by putting them in the shape of a homestead. A homestead so acquired will be subjected to the debts of creditors in bankruptcy. In re Sauthoff, 16 N. B. R. 181; 21 Fed. Cas. 542 (1877).

The wife of an insolvent had contracted to purchase certain property and it was subsequently conveyed to her. Her husband, more than four months before the filing of the petition in bankruptcy, furnished $1,400 as part of the purchase price. This was held to be a fraud upon his creditors. Under the Act of 1867, in a suit brought by the assignee, the husband was required to convey to him his interest in such homestead, less the amount that he was authorized by law to invest in the homestead under the laws of the state. Johnson v. May et ux., 16 N. B. R. 425; 13 Fed. Cas. 771.

A petitioner in voluntary proceedings had sold, prior to filing his petition, a homestead that was exempt under the laws of the state. It was held that he could not invoke the protection of the Bankrupt Act in favor of the vendee. In re Everett, 9 N. B. R. 90; 8 Fed. Cas. 906.

Personal property which is subject to exemption under the laws of the state in lieu of a homestead will be set apart to the bankrupt, notwithstanding it had been levied upon under an execution. In re Peebles, 2 Hughes, 304; 19 Fed. Cas. 94.

A conveyance by a bankrupt and wife of their homestead was set aside by the assignee in bankruptcy as fraudulent. It was held that the conveyance did not impair their rights to the homestead, which must be recognized in the proceedings in bankruptcy. McFarland v. Goodman et al., 6 Biss. 111; 16 Fed. Cas. 90.

Held, under the Act of 1867, that the assignee should include the homestead in his schedule of the exempt property. In re Sinnett, 4 Saw. 250; 22 Fed. Cas. 228.

A creditor may enforce his lien against the homestead of a bankrupt without respect to the pendency of the proceedings. Ibid.

When a homestead right may be lost by abandonment, the proof of such abandonment must be clear and decisive. Rix v. Capitol Bank, 2 Dill. 367; 20 Fed. Cas. 846.

The waiver by a debtor of his homestead to a certain creditor does not operate in favor of the general creditors. In re Poleman, 5 Biss. 526; 19 Fed. Cas. 918.

An insolvent sold his personal property, and with the proceeds paid a mortgage on his homestead; nevertheless it was held under the laws of California that he might claim the exemption of the homestead against the assignee in bankruptcy. In re Henkel, 2 Saw. 305; 11 Fed. Cas. 1124.

The Constitution of Florida exempts as a homestead 160 acres of land, not in an incorporated town or city, without any limit as to its value. It was held in the case of a farmer that this exemption would cover his house and farm to the limit mentioned in area, together with the improvements thereon; but did not embrace tenement-houses and mills erected on a portion of the tract; also that a millowner who has a farm attached to his mill could hold his residence and mill, but not the farm. Greely v. Scott et al., 2 Woods. 657; 10 Fed. Cas. 1072.

Judge Erskine, of the district court of Georgia, affirmed the decision of the register, as follows: "On the 1st of June, 1868, Dr. William Taylor, then residing in a house in Irwinton, which he had rented, having as his family Mrs. Carswell, her three children and two or more hired servants which were hired by him and were under his control, was the head of a family, and as he still continues so to reside, his position as head of the family still continues." Proceeding, the register held that he was entitled to an exemption of fifty acres of land under the laws of Georgia, but not to any enlargement of his exemption on account of the three children of Mrs. Carswell. In re Taylor, 3 N. B. R. 157; 23 Fed. Cas. 730.

Held, under the laws of Georgia, that a bankrupt could not claim the exemption of a homestead as against a mortgage given to secure the purchase price. In re Whitehead, 2 N. B. R. 599; 29 Fed. Cas. 1030.

It was held in Illinois that where the homestead of a bankrupt was sold under a mortgage, the assignee in bankruptcy should set apart to the bankrupt $1,000 in cash from the proceeds after paying the mortgaged claim, unless the property was susceptible of division so as to set apart the homestead. In re Poleman, 5 Biss. 526; 19 Fed. Cas. 918.

Under the Constitution of Kansas, it was held that property occupied by the bankrupt as a residence did not pass to the assignee, and that he could not sustain a bill to set aside a prior mortgage on said property, or to restrain its foreclosure in a state court. Rix v. Capitol Bank, 2 Dill. 367; 20 Fed. Cas. 846.

The bankrupt was the owner of a brewery in an incorporated town, and occupied part of the building as a residence. Held, under the laws of Kansas, that the whole house was exempt as a homestead. In re Tertelling, 2 Dill. 339; 23 Fed. Cas. 861.

In Kentucky, land cannot be exempted as against debts contracted before its acquisition, nor can a debtor claim the exemption of an undivided interest in lands upon which there are no improvements, although he intended to build a house on the property and occupy it as a homestead. In re Duerson, 13 N. B. R. 183; 7 Fed. Cas. 1166.

A court of bankruptcy will recognize the right of homestead notwithstanding the bankrupt has absconded, if his family still resides thereon, in the absence of proof that he has acquired a domicile elsewhere. So held in Michigan. In re Pratt, 1 Flip. 353; 19 Fed. Cas. 1247.

The provisions of the Homestead Exemption Act of Missouri considered and applied in Bailey v. Comings, 16 N. B. R. 382; 2 Fed. Cas. 367.

The homestead law of Missouri provided that it should not apply to any debts or liabilities contracted before it took effect. A public administrator gave his bond and took the property of a decedent before the statute went into force, and subsequently misappropriated it. Judge Dillon held that the claim of the heirs was a liability contracted before, and in existence when, the homestead law was passed. In re Hook, 2 Dill. 92; 12 Fed. Cas. 453.

Under the laws of Missouri in force in 1864, a debtor could carve out a homestead from a leasehold estate, and when it could not be divided, he could retain $1,000 from the proceeds. In re Beckerford, 1 Dill. 45; 4 N. B. R. 203; 3 Fed. Cas. 26.

Reversing the district court, Judge Dillon granted a motion by the mortgagees for an order directing the assignee in bankruptcy to sell the homestead, which was exempt under the laws of Nebraska, in pursuance of a mortgage executed by the bankrupt and his wife, notwithstanding it contained no express waiver of the homestead right. In re Cross, 2 Dill. 320; 6 Fed. Cas. 884.

In Nebraska, a homestead exemption may be claimed as to property of which the bankrupt is not sole owner, but in which he has such an interest as could be sold on execution. Bartholemew v. West et al., 2 Dill. 290; 2 Fed. Cas. 963.

Nevada copied the exemption law of California, but the Constitutions of the two states on that subject were different. Held, that in construing the Nevada law the court of bankruptcy was not bound by the construction of the courts of California; held, also, that a bankrupt was entitled to an interest not exceeding $5,000 in value in a dwelling-house and land actually occupied by him as a homestead, notwithstanding he was only a tenant in common. In re Swearinger et al., 5 Saw. 52; 23 Fed. Cas. 527.

After a homestead had been set apart, under the laws of North Carolina, to a bankrupt, the district court refused to order a reassessment to correct an alleged excess of value. In re Hall, 2 Hughes, 411; 11 Fed. Cas. 199.

The laws of North Carolina require that one who seeks a homestead exemption shall file a petition and have the property set off to him. The bankrupt having failed to comply with this provision, it was ruled that the assignee must sell the property for the benefit of the creditors. In re Farish, 2 N. B. R. 168; 8 Fed. Cas. 1015.

While a bankrupt owned but a single piece of real estate, which was mortgaged for more than its value, it was held under the exemption laws of Ohio that he was not the owner of a homestead, and that he was entitled to an exemption from personal property to an amount not exceeding $500. In re May, 16 Fed. Cas. 1207.

Held, in Ohio, that where the wife of the bankrupt is the owner of a house not occupied as a homestead, the bankrupt is entitled to an exemption of property to the value of $500. In re Tonne, 13 N. B. R. 170; 24 Fed. Cas. 51.

A single man, keeping house, and having orphan children bound to him under the apprentice laws of the state, was held not to be entitled to the exemption of a homestead of 100 acres under the laws of Texas. A tract of fifty acres, not to exceed in value $500, was ordered to be set apart to him as a citizen. In re Summers, 3 N. B. R. 84; 23 Fed. Cas. 379.

It was held not to be necessary that town lots should be contiguous to each other to authorize an exemption under the Constitution of Texas, if they were designated and used as a homestead, and did not in the aggregate exceed $5,000, irrespective of improvements. Theiso v. Cain, 23 Fed. Cas. 906.

The laws of Vermont allowed a homestead exemption to the value of $500. It was held that that sum might be put into an undivided interest in real estate and into premises to which others held the legal title. Johnson v. May et ux., 16 N. B. R. 425; 13 Fed. Cas. 771.

The homestead law of Wisconsin exempts not to exceed one-quarter of an acre of land in a village or city and "the dwelling-house thereon." It was decided that this does not cover a business block used as a dwelling. The court further decided that in the case of a dwelling-house and a store on the same lot, the former could be set off as a homestead, but that he could not divide a building and assign to a bankrupt the part occupied by him. In re Lammer, 7 Biss. 269; 14 Fed. Cas. 1048.

The bankrupt had sold his homestead, and received notes in part payment of the purchase price. It was held under the Act of 1867 and the laws of Virginia that he could claim the notes as exempt against judgments recovered against him in actions for torts, and notwithstanding he had removed from the state after adjudication. In re Radway, 3 Hughes, 609; 20 Fed. Cas. 154.

Under the laws of Virginia, a claim for rent is superior to the right of homestead. A landlord in that state solicited and secured a confession of judgment from the bankrupt, the judgment showing that it was "recovered for rent." It was held that he had waived his specific lien, and that the bankrupt would be allowed the homestead as against the judgment. In re Lumpkin, 2 Hughes, 175; 15 Fed. Cas. 1110.

The purchaser of property set apart as a homestead under the laws of Virginia, and sold by the husband, the wife not concurring, will be required to relinquish it, and a summary petition is the proper proceeding for that purpose. In re Smith et al., 2 Hughes, 307; 22 Fed. Cas. 392.

The homestead exemption allowed by the laws of Virginia cannot be set apart out of partnership effects. Ibid.

Chief Justice Waite held that a bankrupt might waive his homestead exemption in a promissory note, under the provisions of the Constitution and laws of Virginia. In re Solomon, 2 Hughes, 164; 22 Fed. Cas. 785.

Personal Property.

A man without wife or child may be the "head of a family," under a state law relating to exemptions. In re Cobb, 1 N. B. R. 414; 5 Fed. Cas. 1123.

A court of bankruptcy loses jurisdiction over property that has been set apart by the assignees as exempt, if no exceptions are taken at the time to the action of the assignees. In re Fetherston, 5 Chi. Leg. News, 193; 8 Fed. Cas. 1174.

Household furniture of the bankrupt had been attached and sold by order of the court, *pendente lite*. Proceedings in bankruptcy having been commenced within four months thereafter, the attachment was dissolved, and the proceeds of the sale paid to the assignee. The court held that the bankrupt was entitled to the money received from the sale as property exempt by the Bankrupt Act of 1867. In re Ellis, 1 N. B. R. 555; 8 Fed. Cas. 549.

A mortgagee of chattels cannot claim the exemption of property covered by the mortgage as against the assignee in bankruptcy, when it is not claimed by the bankrupt mortgagor. Edmondson v. Hyde, 2 Saw. 205; 8 Fed. Cas. 324.

Construing the Act of 1867 (section 5045, R. S.), the court held that an assignee in bankruptcy cannot set apart money to the bankrupt, unless it is the proceeds of property specifically exempt where the family is absolutely destitute. In re Tucker, 24 Fed. Cas. 264.

In the case cited, Judge Woods upheld the constitutionality of the clause in the Act of 1867, as amended March 3, 1873, giving the bankrupt the benefit of certain exemptions. In re Smith, 2 Woods, 458; 22 Fed. Cas. 413.

Held, under the Act of 1867, that money might be allowed to the bankrupt for the temporary support of his family when the circumstances required it; but that real estate could not be set apart as exempt property under the head of "articles or necessaries." In re Thornton, 2 N. B. R. 189; 23 Fed. Cas. 1144.

An application for an exemption made to the assignee in bankruptcy under the Act of 1867 (section 14), and denied by the assignee, was reviewed by the district judge on an exception to a decision of the assignee. In re Thiell, 4 Biss. 241; 23 Fed. Cas. 917.

A court of bankruptcy has no jurisdiction to defend exempt property, after it has been designated and set apart, against adverse claims. Jeffries v. Bartlett, 20 Fed. Rep. 496.

Where a partnership sold its property and divided the proceeds a month before the filing of a petition in bankruptcy, and one partner purchased property exempt under the laws of the state, it was held that it must be deemed partnership assets. In re Melvin et al., 17 N. B. R. 543; 16 Fed. Cas. 1338.

Where the question was raised whether the bankrupt had made a full disclosure of his property, the court refused to allow his exemptions under section 14 of the Act of 1867, until he had passed his final examination. In re Mastbaum, 16 Fed. Cas. 1080.

A bankrupt must apply for his exemption previous to obtaining his discharge. In re Kean et al., 2 Hughes, 322; 14 Fed. Cas. 157.

The court held that the bankrupt was entitled to the exemption of the articles specified in section 14 of the Act of 1867 (section 5045, R. S.), notwithstanding they had been taken under an execution prior to the commencement of the proceedings. In re Martin, 2 Hughes, 418; 16 Fed. Cas. 880.

The proper proceeding by a bankrupt who feels aggrieved by the action of the assignee in setting apart his exempt property was held to be to except to the order of the assignee, and that the question be certified to the court. In re Pryor, 4 Biss. 262; 20 Fed. Cas. 28.

An assignee need not designate property upon which there is no lien in setting apart the exemptions of the bankrupt. In re Preston, 6 N. B. R. 545; 19 Fed. Cas. 1291.

Where an assignee moves to have an attachment dissolved as to property that has already been set apart as exempt, he is personally liable for the costs of the proceeding. In re Preston, 6 N. B. R. 545; 19 Fed. Cas. 1291.

The fact that a bankrupt had made a conveyance of property in violation of the Bankrupt Act does not deprive him of a lawful exemption out of the property. Penny v. Taylor, 10 N. B. R. 200; 19 Fed. Cas. 194.

The bankrupt's household furniture had been seized and sold under execution and distress for rent. The court held that the assignee could not pay him out of the funds in his hands a sum of money representing his lawful exemptions. In re Lawson, 2 N. B. R. 54; 15 Fed. Cas. 87.

A debtor had made an assignment of all his property for the benefit of preferred creditors. Proceedings having been commenced in bankruptcy, the assignee brought an action to recover such property, and the court held that the value of the property which was exempt must be deducted, and judgment entered only for the balance. Grow v. Ballard et al., 2 N. B. R. 194; 11 Fed. Cas. 88.

Held, that money could not be set over to the bankrupt under the words "articles and necessaries" in section 14 of the Act of 1867, unless it was the proceeds of specific things which ought to have been set apart. In re Welch, 5 Ben. 230; 29 Fed. Cas. 605.

Watches, breast-pins, guns, pistols, fishing tackle, and paintings were held not to be "necessaries," within the contemplation of the Act of 1841. In re Ludlow, 1 N. Y. Leg. Obs. 322; 15 Fed. Cas. 1079 (1843).

Under the circumstances of the case, the assignee was allowed to set apart a sum of money to the bankrupts as "necessaries," under section 14 of the Act of 1867. In re Hay et al., 2 Low. 180; 11 Fed. Cas. 887.

Where the owner of exempt personal property mortgages it, he waives the exemption as against the mortgagee, but not as against the assignee in bankruptcy, if there should be a surplus after the payment of the mortgaged debt. In re Jones, 2 Dill. 343; 13 Fed. Cas. 931.

The filing of a petition in bankruptcy was held to be an election to take the exemption in force in 1864 according to the terms of the Act of 1867, notwithstanding a later law of the state made a more liberal exemption. In re Askew, 3 N. B. R. 575; 2 Fed. Cas. 29.

Property of the bankrupt which is exempt under the bankrupt law, as well as the law of the state, cannot be sold after the filing of his petition in bankruptcy, although it was levied upon before. In re Griffin, 2 N. B. R. 254; 11 Fed. Cas. 5.

In making out a list of property to be set over to the bankrupt as exempt, the value of each article should be stated so as to show that the aggregate does not exceed the limitations of the act. In re Graham, 2 Biss. 449; 10 Fed. Cas. 914.

In setting apart to a bankrupt property that is exempt, but upon which there is a lien for alimony, it should be stated in the order that it does not prejudice the wife's rights. In re Garrett, 2 Hughes, 235; 10 Fed. Cas. 47.

Where a bankrupt makes a sale in fraud of his creditors, it is good as against him; and it follows that he cannot claim such property as exempt after it had been recovered in a suit by the assignee. In re Graham, 2 Biss. 449; 10 Fed. Cas. 914.

In adopting the exemption laws of the states, respectively, congress cannot abrogate any of the conditions or limitations contained in such laws. In re Duerson, 13 N. B. R. 183; 7 Fed. Cas. 1166.

Under the Act of 1867 where the assignee had made an authorized exemption of personal property, creditors were required to except under general order 19; but as to real estate no exception was necessary except to the account of the assignee, as the title to the real estate remained in the assignee notwithstanding his action. In re Gainy, 2 N. B. R. 525; 9 Fed. Cas. 1065.

Under the Act of 1867, as amended, the law of the domicile as it existed in 1871, fixed the bankrupt's exemptions, notwithstanding they were subsequently reduced by the Constitution and laws of the state. In re Cohen, 3 Dill. 295; 6 Fed. Cas. 13.

The constitutionality of the amendment of 1873 to the Act of 1867, which increases exemptions, is upheld in its operation on debts contracted prior to the passage of the act, liens by judgment, etc., in In re Jordan, 8 N. B. R. 180; 13 Fed. Cas. 1079, and 10 N. B. R. 427; 13 Fed. Cas. 1082.

The Constitution of Arkansas adopted in 1868, provided that "The personal property of any resident of this state to the value of two thousand dollars, to be selected by such resident, shall be exempted from sale on execution," etc.; also that "All laws of this state not in conflict with this Constitution shall remain in full force until otherwise provided by the general assembly, or until they shall expire by their own limitation." At that time there was a statute in force making liberal exemptions of personal property. Judge Dillon held that the constitutional exemption was exclusive, and a bankrupt could only claim $2,000 and could not claim any additional exemption under the law of Arkansas or under section 14 of the Bankruptcy Act of 1867, as amended by the Act of June 8, 1872. In re Hezekiah, 2 Dill. 551; 12 Fed. Cas. 92.

A bankrupt is not entitled to an exemption of the property of the firm of which he was a member. In re Tonne, 13 N. B. R. 170; 24 Fed. Cas. 51. So held in Arkansas under the Act of 1867 and the Constitution of that state adopted in 1868. In re Handlin et al., 3 Dill. 290; 11 Fed. Cas. 421. Also in Pennsylvania construing the law of the state and the Bankrupt Act of 1867. In re Hafer et al., 1 N. B. R. 547; 11 Fed. Cas. 152. Judge Sawyer rendered a decision to the same effect putting it upon the ground that the assets of a partnership are not "property of the partners," within the meaning of the exemption laws. In re Corbett, 5 Saw. 206; 6 Fed. Cas. 528. Judge Erskine quoted, with approval, the language of Judge Dillon as follows: "While the adjudged cases relating to the question under consideration are not uniform, a careful examination of all of them justifies me in saying that they are quite decisively against the proposition that individual exemptions can be allowed out of the partnership estate at the expense of the joint creditors." In re Stewart et al., 13 N. B. R. 295; 23 Fed. Cas. 51. But see the following cases:

When a state law allows money exemption, such exemption may be allowed to the individual partners out of the partnership assets in bankruptcy. In re Young, 3 N. B. R. 440; 30 Fed. Cas. 835 (1869).

Held, that when the individual estate of a bankrupt was sufficient to furnish the exemption allowed by the state laws it should be subject thereto; but if not, the debtor could have his exemptions allowed out of the assets of the firm of which he was a member. In re Richardson et al., 1 N. B. R. 114; 20 Fed. Cas. 697.

An exemption can only be allowed to a partner out of the surplus of the partnership effects after a payment of creditors. In re Price et al., 6 N. B. R. 400; 19 Fed. Cas. 1314.

Nothing can be set apart to a firm as exempt property, because it ceased to exist as a firm upon the adjudication in bankruptcy. In re Blodgett et al., 10 N. B. R. 145; 3 Fed. Cas. 721.

Under the laws of Michigan, the individual members of a firm are not entitled to a separate exemption of "tools, implements, materials, stock, * * * not to exceed in value two hundred and fifty dollars." In re Blodgett et al., 10 N. B. R. 145; 3 Fed. Cas. 721; In re Boothroyd et al., 14 N. B. R. 223; 3 Fed. Cas. 892.

An exemption allowed by the laws of the state attaches to a partner who has bought out his copartner, even against the creditors of the firm. In re Bjornstad, 9 Biss. 13; 3 Fed. Cas. 489.

The individual members of a firm can claim no exemptions from its assets until all the partnership debts are paid. In re Croft et al., 8 Biss. 188; 6 Fed. Cas. 838.

It was decided under the laws of Colorado, that a merchant might claim the exemption of a horse, but not a buggy, and that he was not entitled to the exemption of $200 worth of goods as stock in trade. In re Peabody, 16 N. B. R. 243; 19 Fed. Cas. 35.

The laws of Georgia exempt property of the value of $1,000 *in specie*. The bankrupt set apart and claimed certain goods as exempt, but the assignee sold the goods with others, and afterward paid to the bankrupt $1,000 out of the proceeds. Held, that the bankrupt was only entitled to the proceeds of the specific goods set apart by him. In re Friend, 3 Woods, 383; 7 Fed. Cas. 821.

An unmarried man who contributes to the support of a mother and sister living in another town, is not entitled to the exemption allowed the "head of a family" by the laws of Georgia. Jones v. Gray, 3 Woods, 494; 13 Fed. Cas. 956.

By the laws of Kansas, a merchant tailor who cuts and fits garments is entitled to an exemption to the value of $400. When the exemption was claimed before the sale of the goods by the assignee, it constituted a lien against the proceeds of the goods while in the hands of the court. In re Jones, 2 Dill. 343; 13 Fed. Cas. 631.

The laws of Maine exempt "all produce of farmers" until harvested. Under this provision it was held that growing crops were exempted to a bankrupt, and that he might continue to occupy the farm until the crops were harvested, on paying rent therefor to the assignee. It was also held that the effect of the adjudication in bankruptcy was the same as a voluntary deed of conveyance to the assignee with a reservation of the crops. In re Hussey, 2 Hask. 244; 12 Fed. Cas. 1052.

The legislature of North Carolina repealed the statutory provisions and restored the common-law right of dower. Subsequently H. filed a petition in bankruptcy. After the issuance of the warrant, he died, leaving a widow. It was held that the widow was entitled to dower in the real estate of her deceased husband. The legislature attempted to create additional exemptions to those theretofore allowed by law. Such exemptions are void as to creditors whose debts were contracted previous to the passage of the act. The personal property exempted by the Act of 1857 upon the death of the husband passes to his legal representatives. The widow is not entitled to it, neither does it go to the assignee in bankruptcy. In re Hester, 5 N. B. R. 285; 12 Fed. Cas. 68.

It was held under the laws of North Carolina that the wife of a bankrupt could not claim dower out of lands owned by him at the commencement of proceedings, in the lifetime of the husband. Kelly v. Strange, 3 N. B. R. 8; 14 Fed. Cas. 273.

Held, under the Act of 1867, that the provisions of the Constitution of North Carolina respecting exemptions applied to contracts existing before the adoption of the Constitution as well as those made afterward. In re Vogler, 2 Hughes, 297; 28 Fed. Cas. 1248.

It was held in New York under the Act of 1841, that articles of jewelry were not exempt as wearing apparel; also that the wife of a bankrupt could retain articles of jewelry belonging to her before marriage, and such as had been presented to her afterward, if they were suitable to her circumstances in life, which was held to be a question of fact. In re Kasson, 4 Law Rep. 489; 14 Fed. Cas. 138 (1842).

The exemption in the laws of Oregon of certain implements to one who carries on a "trade, occupation or profession," was held not to apply to a contractor. In re Whetmore, Deady, 585; 29 Fed. Cas. 921.

Under the laws of Pennsylvania, an expectant interest may be set apart for the use of the bankrupt, provided its present value does not exceed $300. In re Bennett, 2 N. B. R. 181; 3 Fed. Cas. 211.

Under section 14 of the Act of 1867, a bankrupt could claim as exempt furniture and other articles to the value of $500. Under the laws of Pennsylvania, he could claim property of the value of $300; but such exemption could not include the same kinds of property as were claimed under the Bankrupt Act. It was further held that the state exemption must be governed by the amount allowed and the mode designated by the law of the state. In re Feely, 3 N. B. R. 66; 8 Fed. Cas. 1123.

The household of an unmarried man consisted of an adopted son, a housekeeper and servants. This was held not to make him the "head of a family" so as to entitle him to the exemption under the Constitution of South Carolina. In re Lambson, 2 Hughes, 233; 14 Fed. Cas. 1047.

Held, that the law of Texas, respecting certain exemptions (Laws 1874, p. 55), applied only to rural, and not urban landlords. In re Robinson, 20 Fed. Cas. 983.

Referring to an exemption in the Act of 1867, Judge Hammond said: "Guided by these humane and liberal principles of construction, I should say that to a commercial man a plain and not extravagantly costly watch, such as this bankrupt owned, is, in the quaint language of the Vermont statute, 'necessary for upholding life.'" In re Steele, 2 Flip. 324; 22 Fed. Cas. 1202.

Under the law of Virginia, the court allowed real estate to be set apart as a portion of the bankrupt's exemption where it would not injure the sale of other real estate, or impair the interest of creditors. In re Edward, 2 N. B. R. 349; 8 Fed. Cas. 343.

Property that was exempt under the laws of Wisconsin, where the bankrupt resided, was in the possession of an officer in Illinois under a writ of attachment. Held, that it was the duty of the court of bankruptcy to protect the exemption as it existed in the former state, without reference to the laws of Illinois. In re Stevens, 2 Biss. 373; 23 Fed. Cas. 2.

Merchants are entitled to the benefit of the provisions of the laws of Wisconsin which exempt "the tools and implements or stock in

trade of any mechanic, or other person, used or kept for the purpose of carrying on his trade or business not to exceed two hundred dollars in value." In re Bjornstad, 9 Biss. 13; 3 Fed. Cas. 489.

The laws of Wisconsin exempt "the tools and implements of stock in trade of any mechanic, miner or other person used and kept for the purpose of carrying on his trade or business not exceeding two hundred dollars in value." It was held that an article which a merchant buys merely for the purpose of exchanging for money, or other valuable property, or a watch bought by a jeweler for the purpose of selling, did not come within the exemption. Ex parte Robinson et al., 7 Biss. 125; 20 Fed. Cas. 963.

The laws of Wisconsin exempted "tools and implements, or stock in trade of any mechanic, miner, or other person used or kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value." It was held under the Act of 1867 that the individual members of a mercantile firm could not claim $200 each out of the partnership stock. In re Hughes et al., 8 Biss. 107; 12 Fed. Cas. 832.

[For wife's right of dower, see § 8.]

DUTIES OF BANKRUPTS.

§ 7. **Duties of Bankrupts.**—(a.) The bankrupts shall —

(1.) Attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed;

(2.) Comply with all lawful orders of the court;

(3.) Examine the correctness of all proofs of claims filed against his estate;

(4.) Execute and deliver such papers as shall be ordered by the court;

(5.) Execute to his trustee transfers of all his property in foreign countries;

(6.) Immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge;

(7.) In case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee;

(8.) Prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the

amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and

(9.) When present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

Preparation and Amendment of Schedules.

A bankrupt is obliged to take up on his schedules partnership property as well as his separate estate, but he need not include an action in tort. In re Brick, 4 Fed. Rep. 804.

The bankrupt conducted a saloon under an arrangement with the owner by which he received one-half of the net profits for his services. Held, that he was not bound to take this interest upon his schedules. In re Beardsley, 1 N. B. R. 457; 2 Fed. Cas. 1176.

The offense of omitting property from a bankrupt's schedules, defined in the Act of 1867, was held to be complete when the false schedule was filed. United States v. Clark, 1 Low. 402; 25 Fed. Cas. 446.

A petitioner is not obliged to enter upon his schedule of property an interest which he has in the net profits of a firm as partial compensation for his services. In re Brown, 5 Law Rep. 121; 4 Fed. Cas. 332 (1842).

A bankrupt is not obliged to enter upon his schedule of liabilities a contingent liability as stockholder in a corporation that has suspended, where it is not in proof that it will not be able to pay its debts without resorting to the stockholders. In re Greenebaum et al., 1 Chi. L. J. 590; 10 Fed. Cas. 1156.

A bankrupt who omitted certain items from his schedule upon the advice of his counsel was held not to be guilty of perjury under the

Act of 1841. United States v. Conner, 3 McLean, 573; 25 Fed. Cas. 595 (1842).

A conveyance made to a bankrupt had been impeached as fraudulent in a suit in a state court, and a receiver had been appointed to take charge of the property in controversy. Held, that the omission of the property so held by the receiver from the schedules of the bankrupt was not a sufficient ground for refusing a discharge. In re Freeman, 4 Ben. 245; 9 Fed. Cas. 750.

The bankrupt's property had been sold under execution, and purchased by his wife with her separate funds. It was held that he was not obliged to enter the property on his schedules. In re Pomeroy, 2 N. B. R. 14; 19 Fed. Cas. 956.

The bankrupt omitted from his schedule of liabilities certain debts that were barred by the statute of limitations of the state where the proceedings were commenced, but might possibly be enforced under the laws of another state. The court held that they should have been included. In re Perry, 1 N. B. R. 220; 19 Fed. Cas. 263.

Neither a judgment nor the levy of an execution divests a bankrupt of his property, and he is bound to take up the property on which such a levy was made on his schedule. In re Lady Bryan Min. Co., 6 N. B. R. 252; 14 Fed. Cas. 928.

Judge Deady, of the district court of Oregon, decided that a willful omission by a bankrupt of a debt due by him is sufficient ground for refusing a discharge; but did not decide whether any creditor but the one whose debt was omitted had a right to object to the discharge. In re Kallish, Deady, 575; 14 Fed. Cas. 93.

The bankrupt entered certain property on his schedule as exempt. The court held that it was the duty of the assignee to correct or disregard to entry, and that it did not affect the truth of the schedule. In re Whetmore, Deady, 585; 29 Fed. Cas. 921.

A bankrupt having property in his possession and treating it as his own, who omits it from his schedule and does not turn it over to his assignee, is chargeable with concealment, and it is no answer to state that it really belongs to his assignees by virtue of a previous assignment under the insolvent laws of the state. In re Beal, 1 Low. 325; 2 Fed. Cas. 1107.

Before the passage of the Act of 1841, a debtor, with many circumstances of fraud, had bought a house and taken the title in his mother's name, and subsequently confessed judgment to his mother, which was partly satisfied by the sale of his household furniture, etc. Held, that he was not obliged to take up the house on his schedule of assets, and that he could properly insert his mother on the schedule of liabilities for the deficiency in her judgment. Ex parte Robertson, 1 N. Y. Leg. Obs. 20; 20 Fed. Cas. 938 (1842).

It was held under the Act of 1841, that the inventory or schedule must designate property so that the assignee can find it out and identify it. The court said: "This is not a mere matter of form, but it is made by the law a condition that he should do so, and he can no more obtain his

discharge without a proper inventory, than he could without entering his petition." In re Frisbee, 4 Law Rep. 483; 9 Fed. Cas. 959.

A schedule of the bankrupt's personal estate that fails to set forth the separate items is defective, but can be amended. So as to a statement of liabilities. In re Hill, 1 Ben. 321; 12 Fed. Cas. 144.

A description of real estate in a schedule is sufficient when it gives the county and town in which it is situated, and the name of the bankrupt's grantor. In re Dodge, 7 Fed. Cas. 785 (1842).

Under the rule of court requiring schedules to be written plainly and without abbreviations, the use of ditto marks (") to bring down a word from the preceding line is forbidden. In re Orne, 1 N. B. R. 79; 18 Fed. Cas. 823 (1867).

It was questioned by Judge Hall, whether a schedule which gave the residences of creditors in abbreviations, as N. Y. for New York, could be certified, but he refused to decide the question on an *ex parte* hearing. Anon., 2 N. B. R. 141; 1 Fed. Cas. 1015.

A creditor will not be heard to object to omissions in the schedules of a petitioner that are not specifically pointed out. In re Plimpton, 4 Law Rep. 488; 19 Fed. Cas. 874.

Held, that no creditor had a right to oppose an application of the bankrupt to amend his schedules so as to include a lease which had been omitted. In re Watts, 3 Ben. 166; 29 Fed. Cas. 433.

Where the bankrupt omitted from his schedule certain debts which he claimed were barred by the statute of limitations, and the creditors had no notice of the proceedings in bankruptcy, a discharge was refused, and the case referred back to a register for further proceedings. In re Cushman, 7 Ben. 482; 6 Fed. Cas. 1066.

Creditors have no right to object to an amendment by the bankrupt of his schedule of creditors for the purpose of inserting a name accidentaly omitted, and no notice is required. In re Hill, 5 Fed. Rep. 448.

After a hearing on specifications in opposition to the discharge of a bankrupt, he was allowed to amend his schedule of assets by supplying an omission. In re Preston, 3 N. B. R. 103; 19 Fed. Cas. 1289.

It was held to be competent under the Act of 1867, for a register to allow amendments to the schedules without notice. In re Heller, 5 N. B. R. 46; 11 Fed. Cas. 1052.

A schedule of creditors cannot be corrected on a motion pending before the register to record a resolution of composition, so as to show that the required number had joined. The correction can only be made at a meeting of creditors. Confirmation of the composition was thereupon denied with leave to renew. In re Asten, 8 Ben. 350; 2 Fed. Cas. 69.

A bankrupt who had omitted an estate in expectancy from his schedule was denied a discharge, but allowed to amend and renew his application. In re Connell, 3 N. B. R. 443; 6 Fed. Cas. 304.

Errors in the making of schedules may be cured by amendments on the payment of costs, when they are due to inadvertence only. In re Frisbee, 4 Law Rep. 483; 9 Fed. Cas. 959.

The court said that it would be a very dangerous practice to permit a voluntary bankrupt to make material changes in his schedules after the close of business at the first meeting of creditors. In re Morganthal, 1 N. B. R. 402; 17 Fed. Cas. 769.

Judge Blatchford held that under the Act of 1867, and the rules of the supreme court, the register and the district court had co-ordinate power to allow a petitioner in bankruptcy to amend his schedules, and that the amendment should be filed with the clerk. In re Morford, Ben. 264; 17 Fed. Cas. 745.

A bankrupt was allowed to make additions to his schedules after the first meeting of creditors, but upon condition that there should be a new warrant issued, embracing as well the names of creditors already notified as of those named in the amendment, notifying them to meet before the register on a day to be named therein and prove their debts. In re Radcliffe, 1 N. B. R. 400; 20 Fed. Cas. 300.

Shields, a debtor, to avoid forced sales, under execution, conveyed to his son-in-law, a bankrupt, certain lands. The bankrupt received no deed, but himself made conveyance of the land which had been deeded to himself, the consideration for the land being paid to Shields, the original grantor. It was held by the bankrupt court that, although the creditors of Shields might have attacked the deed as fraudulent, yet as between Shields and the bankrupt the deed was valid to vest the title in the bankrupt, which passed to his assignee, and not having been included in his schedules, the bankrupt had, therefore, concealed his property. In re O'Bannon, 18 Fed. Cas. 516; 2 N. B. R. 15 (1868).

Rights and Duties.

A solvent debtor has the right to pay any or all his debts, notwithstanding the pendency of bankruptcy proceedings against him. In re Oregon Bulletin Printing Pub. Co., 13 N. B. R. 506; 18 Fed. Cas. 773 (1876).

After trustees for creditors have settled their trust and been discharged, and the bankrupt has been discharged, a surplus of assets appearing, the bankrupt is entitled to it. Mayer v. Gourden, 26 Fed. Rep. 742.

The right of a bankrupt to redeem land from a sale for taxes is not terminated until the appointment of an assignee. Hampton v. Rouse, 22 Wall. 263.

Before the appointment of an assignee, the bankrupt is trustee of his estate, and as such can waive demand and notice upon a note of which he was an indorser. Ex parte Tremont National Bank, 2 Low. 409; 24 Fed. Cas. 184.

Creditors may forfeit their rights against each other by neglect to prove their claims; but as long as there are creditors unpaid, the bankrupt has no right to demand any part of the property. In re Wright, 6 Bis. 317; 30 Fed. Cas. 661 (1875); In re Wright, 2 N. B. R. 41; 30 Fed. Cas. 663 (1868).

Until the appointment of an assignee, a bankrupt has a right to pursue all proper legal measures for the protection of his interests. Myers v. Callaghan et al., 5 Fed. Rep. 726.

Any agreement signed by a bankrupt after the commencement of proceedings is a nullity so far as the estate is concerned. In re Anderson, 2 Hughes, 378; 1 Fed. Cas. 831.

A bankrupt who has knowledge of the place where his books are deposited, and denies their existence, was held chargeable with a concealment of his books, under section 29 of the Act of 1867. In re Hammond et al., 1 Low. 381; 11 Fed. Cas. 380.

It is improper for a bankrupt to sell any of his property after filing his petition, even to raise money to defray the costs of the proceedings. In re Thompson, 13 N. B. R. 300; 23 Fed. Cas. 1021.

A bankrupt was committed and ordered to be detained until he should pay to the assignee the amount returned on his schedule of assets as "cash on hand." In re Dresser, 3 N. B. R. 557; 7 Fed. Cas. 1069.

Two days before the filing of his petition, the bankrupt had procured certain money from a mortgage. He was ordered to pay it to the assignee, but allowed to retain the amount paid his attorney, and a sum necessary for the temporary support of himself and family as provided by the Act of 1867, but not the expenses of procuring his discharge. In re Thompson, 13 N. B. R. 300; 23 Fed. Cas. 1021.

Judge Blatchford refused to punish for contempt, a bankrupt who had collected money after the filing of the petition, and spent part of it, but who had afterward turned over all his assets to the assignee, holding that while he was guilty of contempt, the estate had lost nothing, because payments made to a bankrupt by debtors after the filing of the petition were invalid against the assignee. In re Hayden, 7 N. B. R. 192; 11 Fed. Cas. 897.

A summary proceeding, and not a separate action, is the proper remedy to compel a bankrupt to deliver property unlawfully withheld by him. In re Thompson, 13 N. B. R. 300; 23 Fed. Cas. 1021.

[See notes to § 70.]

DEATH OR INSANITY.

§ 8. **Death or Insanity of Bankrupts.**— (a.) The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided*, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

An assignment of the husband's estate under the national Bankrupt Act and a sale thereof by the assignee in bankruptcy in pursuance of an order of the court does not bar the wife's right of dower. Porter v. Lazear, 109 U. S. 84; In re Angier, 10 Amer. Law Reg. 190; 1 Fed. Cas. 914.

An assignment and sale of the husband's real estate in bankruptcy proceedings did not bar the wife's right of dower in such property. Porter v. Lazear, 109 U. S. 84.

The supreme court of Indiana having decided that a deed to an assignee in bankruptcy is a judicial sale, the court of bankruptcy held that a wife, upon the bankruptcy of her husband, becomes the owner of one-third of his equitable interest in land. Warford v. Noble et al., 2 Fed. Rep. 202.

Under the laws of Indiana, as construed by the courts of that state, a wife's inchoate right of dower becomes absolute upon the sale of her husband's real estate on execution. It was held that an adjudication in bankruptcy had the same effect; and it was further held that this rule does not apply to land in which the husband has only an equitable title, and that there can be no dower in such land. Warford v. Noble et al., 19 Am. Law Reg. 44; 29 Fed. Cas. 227.

The court held that an insane person cannot commit an act of bankruptcy, but that a lunatic may be adjudged a bankrupt for acts previously done against the opposition of his guardian. In re Weitzel, 7 Biss. 289; 29 Fed. Cas. 604.

While an insane person cannot commit an act of bankruptcy, he may be adjudged a bankrupt after he has become a lunatic, for an act committed while sane; but Judge Lowell expressed doubt as to whether a discharge could be given to an insane person. In re Pratt, 2 Low. 96; 19 Fed. Cas. 1248.

[The law in cases of death, under the Act of 1867, is stated in the following cases:]

Proceedings in bankruptcy will be abated upon the death of the debtor between the service of the rule to show cause and the adjudication. Frazier et al. v. McDonald, 8 N. B. R. 237; 9 Fed. Cas. 737.

The bankrupt died after adjudication, but before taking the oath required by section 29 of the Act of 1867. The court held that a discharge could not be granted. In re Quinike, 2 Biss. 354; 20 Fed. Cas. 142.

The bankrupt died a few months after filing his petition. Held, that he could not be discharged, as he had not taken the oath required by section 29 of the Act of 1867. In re Gimke, 4 N. B. R. 92; 11 Fed. Cas. 115.

A discharge in bankruptcy cannot be adjudged when the bankrupt dies before making application for discharge as prescribed in section 29 of the Act of 1867. In re O'Farrell, 2 N. B. R. 484; 18 Fed. Cas. 601 (1869).

[See notes to §§ 3 and 4.]

ARREST.

§ 9. **Protection and Detention of Bankrupts.**— (a.) A bankrupt shall be exempt from arrest upon civil process except in the following cases:

(1.) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders;

(2.) When issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

(b.) The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

Under the Act of 1841, a petitioner in bankruptcy was privileged from arrest on civil process during the proceedings. U. S. v. Dobbins, 25 Fed. Cas. 876 (1842).

A writ of *habeas corpus* was denied to a bankrupt who was under arrest on an execution issued on a judgment for tort. In re Whitehouse, 1 Low. 429; 29 Fed. Cas. 1032.

Judge Lowell held that section 26 of the Act of 1867 did not release the bankrupt from custody when he was already in arrest at the time his petition was filed. In re Walker, 1 Low. 222; 29 Fed. Cas. 1.

The bankrupt having been imprisoned by proceedings under the law of a state to discover assets was released on *habeas corpus* by a United States court. Ex parte Taylor, 1 Hughes, 617; 23 Fed. Cas. 727.

When a cause of action for a tort has been reduced to judgment, it is covered by a discharge in bankruptcy, and a bankrupt arrested upon such a judgment will be released by the court of bankruptcy, notwithstanding the state court had refused to do so. In re Wiggins, 2 Biss. 71; 29 Fed. Cas. 1156.

A court of bankruptcy may order the release of a bankrupt held in custody by proceedings of arrest and bail under the state laws, and stay proceedings until the question of discharge is passed upon, and at the same time make a reference to determine whether the debts for which he

was arrested are such that they would be discharged by proceedings in bankruptcy. In re Jacoby, 1 N. B. R. 118; 13 Fed. Cas. 279.

A bankrupt had given a bond for his appearance from time to time, but failed to appear and furnish schedules in obedience to an order of the court, and left the jurisdiction with assets exceeding the penalty of the bond. It was held that the obligee could recover in an action of debt, and that, under the circumstances, the judgment should be for the whole amount of the bond and interest. Marble v. Fulton et al., 1 Hask. 462; 16 Fed. Cas. 695.

A petition was filed in the court of bankruptcy for a writ of *habeas corpus* for the release of the bankrupt from arrest under the order of a state court. Judge Blatchford said: "I can only examine the affidavit of a plaintiff on which the order of arrest was made. I have done so, and am satisfied that the state court must, on that affidavit, have believed that the debt in question was created by the fraud of the bankrupt, or by their defalcation while acting in a fiduciary character, and must on that account have ordered the arrest. The writ must be discharged, and the prisoners be remanded to the custody of the sheriff." In re Valk, 3 Ben. 431; 28 Fed. Cas. 873.

The exemption of the bankrupt from arrest on civil process applies whether he is arrested before or after the commencement of proceedings in bankruptcy. In re Seymour, 1 N. B. R. 29; 1 Ben. 348 (1867).

The object of a creditor in imprisoning a debtor on execution is to secure secret funds with which the debt may be paid. The Bankrupt Act divests the bankrupt debtor of all his property for the benefit of all creditors. A creditor may, therefore, be enjoined from enforcing his judgment by imprisonment. In re Winthrop, 5 Law Rep. 24; 30 Fed. Cas. 375 (1842).

Under the Act of 1867 the court refused to discharge the bankrupt from arrest on the ground that the debt was created by fraud, for the reason that a discharge in bankruptcy would not affect such an indebtedness. In re Pettis, 2 N. B. R. 44; 19 Fed. Cas. 395.

After adjudication, the bankrupt was arrested in a civil suit in a state court upon an affidavit stating that the suit was for a debt created by his defalcation while acting in a fiduciary capacity. In fact, and as appeared in the complaint, the suit was for the proceeds of goods consigned to him to sell on commission, which he had sold, but the proceeds of which he had not remitted. On an application to the court of bankruptcy to discharge him from arrest, the court held that it could only look at the affidavit on which the order of arrest was granted in the state court. In re Kimball, 2 Ben. 554; 14 Fed. Cas. 476.

Certain creditors of the bankrupt caused his arrest by an order from a state court on the ground that the debt had been fraudulently contracted. Thereafter they proved their claim in bankruptcy. The bankrupt applied to the court to have the arrest vacated and further proceedings enjoined. The court held that as the debt was one that would not be discharged in bankruptcy, the order of arrest issued by the state court

could not be vacated; but as the debt was provable in bankruptcy, the proceedings of the creditor in the state court would be stayed pending the determination of the question of discharge. In re Migel, 2 N. B. R. 481; 17 Fed. Cas. 279.

[See notes to §§ 2 and 11.]

EXTRADITION.

§ 10. **Extradition of Bankrupts.**— (a.) Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

The practice of the state in which the arrest is made must be observed in the preliminary examination of an alleged offender under the Bankrupt Act who is arrested in another district for extradition. U. S. v. Brawner, 7 Fed. Rep. 86.

SUITS BY AND AGAINST BANKRUPTS.

§ 11. **Suits By and Against Bankrupts.**— (a.) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

(b.) The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

(c.) A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d.) Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

Stay of Proceedings, etc.

An action on a debt which is provable, whether it could be covered by a discharge or not, will be stayed by the commencement of proceedings in bankruptcy, provided final judgment has not been entered. In re Van Buren, 19 N. B. R. 149; 28 Fed. Cas. 953.

After discharge the bankruptcy court will not enjoin the prosecution of suits against the bankrupt in the state court. He must plead his discharge in the state court. Mayer v. Bank, 27 Fed. Rep. 591.

Where there was a suit pending against the bankrupt at the time of the adjudication, it may be prosecuted against his assignee if the court of bankruptcy does not take steps to stay the proceedings. Norton v. Switzer, 93 U. S. 355.

Creditors who had sued out writs of attachment against a debtor afterward filed a petition in bankruptcy against him. It was held under the Law of 1841 that it was not necessary for the suits at law to be withdrawn until it was determined whether the petition could be sustained. Everett et al. v. Derby, 5 Law Rep. 225; 8 Fed. Cas. 897 (1842).

An adjudication in bankruptcy will not bar the further prosecution in the bankrupt's name of a claim transferred more than four months before the commencement of proceedings to one for whose benefit the suit was brought, where his assignee in bankruptcy consents thereto. Thatcher v. Rockwell, 105 U. S. 467.

Where a levy has been made under an attachment by a state court before the commencement of proceedings in bankruptcy, and the assignee thereafter appointed permits the sale to be made, he cannot attack the purchaser's title in a collateral proceeding. Doe v. Childress, 21 Wall. 642.

A bankrupt had obtained an injunction against certain creditors staying all suits and proceedings to collect certain debts. Thereupon the pending suit was discontinued, but later a new suit was brought for the recovery of the same debt. This was held to be a violation of the injunction. In re Schwarz, 14 Fed. Rep. 787.

The adjudication in bankruptcy relates back to the filing of the petition and dissolves from that day an attachment previously levied and pending. Zeiber v. Hill, 1 Sawy. 268; 8 N. B. R. 239; 30 Fed. Cas. 917 (1870).

Claimants to the property of the bankrupt living in other districts having asserted their rights in state courts, it was held that the assignee might defend his title in the state courts by filing a bill in the court of bankruptcy to have the same determined, and that the actions in the state courts be enjoined. In such a case, he cannot proceed by summary petition. In re Litchfield, 13 Fed. Rep. 863.

Certain charges were heard in opposition to the discharge of the bankrupt, and overruled, and a discharge granted. The same matters constituted the cause of action in a suit that the assignee in bankruptcy had brought in a state court. The defendants in the latter suit asked that the assignee be required to discontinue it, but the application was refused, the court saying: "It is more proper that they should be determined in the plenary suit brought, if raised therein, and by the tribunal in which the suit is brought with the provisions for review which obtain in a suit between party and party." In re Penn et al., 5 Ben. 500; 19 Fed. Cas. 155.

Held, under section 5118, R. S., that a special partner was not entitled to the stay of proceedings in an action brought against him on account of proceedings in bankruptcy against the firm and the general members. Abbendroth v. Van Dolsen, 131 U. S. 66.

In the case cited, the supreme court considered and determined under what circumstances the Bankrupt Act of 1867 did not prevent a state court from rendering judgment against a defendant on a verdict in an attachment suit so as to permit the plaintiff to proceed against the sureties. Hill v. Harding, 130 U. S. 699.

The Act of 1867 (sections 5106, 5107, R. S.) does not permit a stay of proceedings subsequent to final judgment for the purpose of putting in motion the remedy of arrest which is reserved to a creditor. In re Whiting, 18 N. B. R. 563; 29 Fed. Cas. 1070.

After the issuance of an injunction in bankruptcy against the sale of property of the bankrupt in pursuance of a judgment of the state court, the order was modified so as to permit the sheriff to sell and pay the proceeds into the court of bankruptcy. It was held that the judgment creditors could not recover from the sheriff for his failure to pay the money to them upon their execution. O'Brien v. Weld et al., 92 U. S. 81.

A certificate in bankruptcy may be pleaded in bar to further proceedings under an attachment suit commenced before the filing of the petition. In re Bellows, 3 Story, 428; 3 Fed. Cas. 138 (1844).

When a bankrupt fails to obtain his discharge, an attaching creditor who has been enjoined from further proceedings in his action may apply for the dissolution of the injunction. In re Bellows, 3 Story, 428; 3 Fed. Cas. 138 (1844). (The above case was reversed in Peck v. Jenness, 7 How. 612, but not on the points here given.)

The assignment of a cause of action for the purpose of giving jurisdiction to a federal court is a fraud upon the court; but when the defendant fails to make objection, and judgment is entered, and the defendant subsequently declared a bankrupt, his assignee or creditors cannot complain of the fraud. Mattox v. Baker, 2 Fed. Rep. 455.

A fraudulent vendee of the debtor cannot maintain a suit in trover against a sheriff who delivered to the assignee in bankruptcy property attached before the bankruptcy as that of the debtor; but the district court will not enjoin such suit upon the petition of the sheriff since he has an adequate defense at law. In re Evans, 1 Low. 525; 8 Fed. Cas. 833.

Injunctions had been granted by the court of bankruptcy against the sale of the bankrupt's property under judgments obtained in good faith. Upon a showing that the property would not realize any more upon a sale by the assignee than it would upon a sale by the sheriff, the court dissolved the injunction. In re Wilbur, 1 Ben. 527; 29 Fed. Cas. 1181.

A plaintiff in a state court who is enjoined from proceeding against one debtor on account of bankruptcy may proceed against the other defendant. Penny v. Taylor, 10 N. B. R. 200; 19 Fed. Cas. 194.

The court of bankruptcy cannot grant relief against a judgment entered against the bankrupt in any other court on a debt arising before adjudication, when he failed to plead his discharge. In re Ferguson, 2 Hughes, 286; 8 Fed. Cas. 1149.

The Act of 1867 (section 5106, R. S.) did not authorize the stay of orderly methods for the collection of taxes. In re Duryee, 2 Fed. Rep. 68.

A debtor filed a petition in voluntary bankruptcy and a petition for composition at the same time, but objected to being adjudged a bankrupt. Held, that the debtor was in no position to resist, by injunction, proceedings by an attaching creditor. In re Tifft, 18 N. B. R. 78; 23 Fed. Cas. 1210.

It is competent for a court of bankruptcy to authorize a creditor to proceed in the usual way to collect his claim, if that course seems to be for the best interests of the estate. In re McGilpon, 3 Biss. 144; 16 Fed. Cas. 107.

In a plea of abatement to an action at law on the ground of the pendency of proceedings in bankruptcy, all the jurisdictional facts must be set up. In re Balch, 3 McLean, 221; 2 Fed. Cas. 503 (1841).

When a creditor is allowed by the court in bankruptcy to proceed with an action then pending, it is not necessary that the assignee should be made a party, and the judgment will be valid against him without it. In re Bonsfield & Poole M. Co., 17 N. B. R. 153; 3 Fed. Cas. 1016.

The jurisdiction of the ordinary tribunals over suits against a bankrupt is not impaired except as they may be controlled by the bankruptcy court to carry out the purposes of the act. In re Davis, 1 Saw. 260; 7 Fed. Cas. 58.

A creditor may prosecute a suit to judgment for the purpose of ascertaining the amount due, but the judgment should disclose this purpose. In re Gallison et al., 2 Low. 72; 9 Fed. Cas. 1009.

The jurisdiction of a state court in a suit in equity is not lost by the commencement of proceedings in bankruptcy more than four months after the commencement of the suit. David v. Friedlander, 104 U. S. 570.

Certain judgment creditors of the bankrupt, after proving their debt, commenced a suit in a state court, setting up that certain property which stood in the name of the bankrupt's wife had been paid for by him in fraud of his creditors. The court of bankruptcy held that proceedings in such suit were stayed by section 21 of the Act of 1867, and that the creditors, by proving their debts, had waived their right of action on either the judgments or the original indebtedness. In re Meyers, 2 Ben. 424; 17 Fed. Cas. 249.

A decree had been obtained against the bankrupt in a state court, which operated as a lien upon his property. Held, that the plaintiff in that action could not proceed under a law of the state for the discovery of assets, and must move in the court of bankruptcy. Ex parte Taylor, 1 Hughes, 617; 23 Fed. Cas. 727.

A judgment from which an appeal has been taken was held not to be a final judgment within the meaning of section 21 of the Act of 1867. The prosecution of such a case is forbidden, and a motion to compel a bankrupt to furnish additional security on the appeal bond is within the contemplation of the inhibition. In re Metcalf et al., 2 Ben. 78; 17 Fed. Cas. 172.

While a vessel was in the hands of an assignee in bankruptcy, it was libelled to recover damages for a collision which occurred before adjudication. The libellants were enjoined from attempting to hold the vessel; and it was held that their lien must be determined in the court of bankruptcy. In re People's Mail Steamship Co., 3 Ben. 226; 19 Fed. Cas. 211.

In Georgia, where a mortgage is merely a security, the power of sale contained in such an instrument cannot be executed after an adjudication in bankruptcy against the mortgagor. Lockett v. Hill et al., 1 Woods, 552; 15 Fed. Cas. 744.

An attachment had been levied on the bankrupt's property within four months before the filing of the petition and after the commencement of bankruptcy proceedings the property was sold. The purchaser filed a creditor's bill to set aside two previous conveyances. The court dismissed the bill with costs, holding that the attachment was dissolved by the commencement of proceedings. Hatfield v. Moller et al., 4 Fed. Rep. 717.

A judgment for a debt created by fraud was held not to be covered by a discharge under the provisions of secion 21 of the Act of 1867. In re Robinson, 6 Blatchf. 253; 20 Fed. Cas. 978.

"A discharge in bankruptcy is valid, in the absence of fraud, in whatever court of the United States a suit is brought, although it may not protect the defendant from a suit brought in a foreign jurisdiction, if he should be found therein." Ruiz v. Eickerman, 5 Fed. Rep. 790.

A discharge in bankrupcy granted in the United States is a bar to proceedings on a debt contracted abroad unless the debtor, being a nonresident, comes to this country for the purpose of evading his debts by means of such discharge. Zaregas' Case, 4 Law Rep. 480; 30 Fed. Cas. 916 (1842).

A debt having been discharged by proceedings in bankruptcy can only be revived by a promise to pay, and such promise must be distinct and unequivocal. Allen v. Fergerson, 18 Wall. 1.

A final discharge was held to terminate an injunction staying proceedings against the bankrupt in a state court until the question of final discharge should be determined, and no motion to dissolve the injunction is necessary. In re Thomas, 3 N. B. R. 38; 23 Fed. Cas. 932.

The bankrupt court will allow a suit pending in a state court against the bankrupt to proceed to judgment; but on motion will stay execution if it appear that the judgment debt is such as may be discharged in bankruptcy. In re Rundle, 2 N. B. R. 113; 1 Chi. Leg. News, 30; 21 Fed. Cas. 5 (1868).

When a debtor is adjudged a bankrupt, all proceedings in the state court against him must stop if the subject-matter of the suit can be proven against his estate in bankruptcy, and no creditor can enforce a secured or unsecured debt (so provable in bankruptcy), in a state court except by permission of the district court. A district court has no jurisdiction over a state court but has complete original jurisdiction of the bankrupt, of his assets and of all his creditors. In re Winn, 1 N. B. R. 499; 30 Fed. Cas. 303 (1867).

Certain mortgaged premises of a bankrupt were worth less than half the amount of the mortgage which was given, in good faith, long before the bankruptcy of the mortgagor. After the filing of the petition, the mortgagee commenced a suit in a state court to foreclose. The district court permitted the suit to proceed, and the circuit court, on a petition of review, affirmed the action of the court below. At the same time, the circuit court held that where the value of the property exceeds the amount secured by the mortgage, or the validity of the lien is in doubt, it is proper for the bankrupt court to restrain the mortgagee from foreclosing. In re Iron Mountain Co., 9 Blatchf. 320; 18 Fed. Cas. 97

After adjudication, mortgagees should be required to enforce their claims in the court of bankruptcy. They may be permitted, however, to proceed in a state court. In re Brinkman, 7 N. B. R. 421; 4 Fed. Cas. 145.

It was held under the Act of 1841 that when a suit was brought in the name of the bankrupt after the appointment of an assignee, the defendant could plead the bankruptcy in abatement. Cook et al. v. Lansing, 3 McLean, 571; 6 Fed. Cas. 412 (1847).

An assignee in bankruptcy having voluntarily submitted to the jurisdiction of a state court, it was held to be too late for him to object that the federal courts alone had jurisdiction after judgment had been rendered against him. Scott v. Kelly, 22 Wall. 57.

When an assignee in bankruptcy appears in a suit brought in a state court, he is bound by the decree, and cannot afterward assert his title in another court. David v. Friedlander, 104 U. S. 570.

It was held that it is the duty of state courts to admit the assignee as a party, in all suits pending, in place of the bankrupt, on production of the appointment as assignee properly authenticated; also, that the bankrupt may be enjoined by the bankruptcy court from any further interference with such suits beyond furnishing serviceable information to the assignee. Sampson v. Burton, 4 N. B. R. 1; 21 Fed. Cas. 297 (1870); 5 N. B. R. 459; 21 Fed. Cas. 303 (1871).

In a case where proceedings to foreclose a mortgage against the bankrupt were commenced before adjudication, it was held that it was not necessary to make the mortgagor's assignee in bankruptcy a defendant, though such assignee might be made a party on his own petition for sufficient reasons. Oliver v. Cunningham et al., 6 Fed. Rep. 60.

Before the filing of proceedings in bankruptcy in the district court of Pennsylvania, a suit had been commenced in Minnesota against one of the bankrupts to recover damages for breach of a contract. The court authorized the suit in Minnesota to proceed for the purpose of liquidating the claim, at the same time securing to the trustee a right to resist the claim there in the pending suit or by a proceeding in equity. In re Cooke et al., 6 Fed. Cas. 431.

Judge Choate expressed the opinion that an assignee is not bound by the allegations of the creditors' petition as to an act of bankruptcy. Linder v. Lewis et al., 10 Ben. 49; 15 Fed. Cas. 554.

It was held that notwithstanding an attachment had been issued more than four months prior to the filing of the petition in bankruptcy, the

state court can, on the application of the bankrupt, stay proceedings against him on a provable debt to await a determination on the question of his discharge. Hill v. Harding, 107 U. S 631.

An assignee in bankruptcy cannot voluntarily, or by service of process, become party to a suit in a state court affecting liens on the bankrupt's lands without the consent of the federal court. Price v. Price, 48 Fed. Rep. 823.

The bankrupt having litigated five years in the state court, the bankruptcy court will not enjoin the execution of a decree of that court on the ground that the assignee in bankruptcy was made a party without leave of the federal court. Price v. Price, 48 Fed. Rep. 823.

[See notes to § 2.]

Limitation of Actions.

A cause of action is not barred by the two years' limitation when it has been fraudulently concealed until within two years. Shainwald v. Davids, 69 Fed. Rep. 687.

The statute of limitations under the Act of 1867 (section 5057, R. S.), begins to run from the time when the assignee could have discovered the fraud by the use of due diligence. Andrews v. Dole, 1 Dill. 108; 1 Fed. Cas. 878.

Suit to set aside a bankrupt's deed is barred by the two years' limitation as against a subsequent assignee, the first assignee having been informed of all the facts and having died without taking action thereon. Scott v. Little, 76 Fed. Rep. 563.

The first assignee having died, the new assigneee cannot plead the statute of limitations as a bar to a claim on a note given by himself to his predecessor. In re Newcomb, 32 Fed. Rep. 826.

Held, that section 5057, R. S., applied as well to suits by the assignee as to suits against him. Adams v. Collier, 122 U. S. 82.

A bankrupt upon his examination refused to answer certain questions on the ground that his answers might criminate him. This was held not to be such notice to the assignee in bankruptcy of the fraud as would start the running of the statute of limitations. Rosenthal v. Walker, 111 U. S. 105.

The limitation as to suits by or against an assignee in bankruptcy relates to parties other than the bankrupt. Phelps v. McDonald, 99 U. S. 298.

Held, that the limitation in section 5057, R. S., in an action to redress a fraud does not begin to run until the fraud is discovered. Rosenthal v. Walker, 111 U. S. 185.

Held, that section 5057, R. S., applied only to suits respecting property of the bankrupt which came into the hands of the assignee to which adverse claims existed before assignment. Dushane v. Beall, 161 U. S. 513.

In the case cited, the supreme court decided under what circumstances the right of action of a plaintiff under a purchase from an assignee in

bankruptcy to redeem from a sale under a deed of trust was barred by the limitation of the Act of 1867. Greene v. Taylor, 132 U. S. 415.

Where an assignee in bankruptcy conveyed the bankrupt's interest in real estate, which was in the possession of another under claim of title, two years after the cause of action in the assignee accrued, it was held that the rights of the purchaser equally with those of the assignee were barred by section 5057, R. S. Wisner v. Brown, 122 U. S. 214.

A supplementary bill against an assignee in bankruptcy set up no new cause of action, but only matters in support of an estoppel. It was held that this was not subject to the limitation of section 5057, R. S. Jenkins v. International Bank, 127 U. S. 484.

An assignee had proceeded in the court of bankruptcy to determine the title to certain property, but dismissed the proceedings without the consent of the defendants. Later, he filed a bill in equity in the circuit court for the same purpose. Held, that in applying section 5057, R. S., the latter proceeding was to be regarded as a continuation of the former. Adams v. Collier, 122 U. S. 382.

The bar of the statute of limitations in the Bankrupt Act of 1867 was held not to be removed by mere ignorance of the existence of a cause of action by the assignee. Avery v. Cleary, 132 U. S. 604; Cleary v. Ellis Foundry Co., id. 612.

Held, that the rights of a purchaser of the bankrupt's interest in real estate from an assignee in bankruptcy were subject to the limitation of section 5057, R. S. Wisner v. Brown, 122 U. S. 214.

Held, that under the limitation of section 5057, R. S., in an action against the assignee of a bankrupt, he will be chargeable with constructive notice of any concealment of fraud by the bankrupt. Cook v. Sherman, 20 Fed. Rep. 167.

Held, that the statute of limitations in a bankruptcy act must be taken advantage of by demurrer or answer or it will be waived. Bartles v. Gibson, 17 Fed. Rep. 293.

The statute of limitations applies to a suit by an assignee in bankruptcy to recover land fraudulently claimed and retained by the bankrupt as a homestead. Leech v. Dawson, 23 Fed. Rep. 654.

A pledgee of stock to secure an unliquidated demand has not such adverse interest as will require suit to be brought therefor by the assignee within two years. Maynard v. Tilden, 28 Fed. Rep. 688.

The limitation of two years to suits by or against the assignee does not apply to, or limit the jurisdiction of the bankruptcy court in proceedings to adjust priorities or determine specific claims to property in its custody or control. In re Anderson, 23 Fed. Rep. 482.

The statute of limitations does not apply to proceedings by the assignee against the bankrupt to recover assets omitted from his schedule. Thomas v. Blythe, 55 Fed. Rep. 961.

Held, that the limitation of actions in the Law of 1867 applied to all judicial controversies between the assignee and an adverse party. Baily v. Glover, 21 Wall. 342.

Section 8 of the Act of 1841 related only to suits against persons having claims to property surrendered by the bankrupt. Clark v. Clark, 17 How. 315.

Held, that the limitation in the Act of 1841 (section 8) did not apply to suits by assignees or other grantees of real estate until two years after adverse possession. Banks v. Ogden, 2 Wall. 57.

An action by an assignee in bankruptcy to recover a debt is within the limitation of section 5057, R. S., as well as a controversy concerning property. Jenkins v. International Bank, 106 U. S. 571.

A writ of error to a judgment rendered in a state court against the bankrupt shortly before adjudication was held to be a suit within section 5057, R. S. Ibid.

Section 5057, R. S., was held in the case cited not to be jurisdictional, but a statute of limitations only. Upton v. McLaughlin, 105 U. S. 640.

In law and in equity, the limitation of an action to redress a fraud do not begin to run until the discovery of the fraud. Baily v. Glover, 21 Wall. 342.

Where an assignee in bankruptcy had obtained possession of securities held by a creditor, an action to recover them must be brought within two years from the time when such possession commenced, unless they were delivered upon some condition or agreement. Doe v. Hyde, 114 U. S. 247.

In a suit by an assignee in bankruptcy to obtain redress against a fraud concealed by the defendant, or secret from its nature, the statute of limitations does not begin to run until the discovery of the fraud. Rosenthal v. Walker, 111 U. S. 185.

Where a defendant failed to plead the bar of the statute of limitations in an action by an assignee in bankruptcy, it was held that he could not do so in the appellate court. Upton v. McLaughlin, 105 U. S. 640.

It was held that the Bankrupt Act (1867), and not the law of the state where the proceedings are had, fixes the time within which a preference can be set aside. In re Hamlin et al., 8 Biss. 122; 11 Fed. Cas. 369.

More than two years after the cause of action accrued, an assignee in bankruptcy brought suit against persons who had received money as counsel fees from the bankrupts without authority at law. The action was held to be barred by section 5057, R. S. Miltenberger et al. v. Phillips, 2 Woods, 115; 17 Fed. Cas. 424.

In the case of a suit by an assignee to collect from stockholders upon unpaid subscriptions, the statute of limitations begins to run from the execution of the debt of assignment, and not from the date of the assessment on the stock by the bankruptcy court. Payson v. Coffin, 5 Dill. 473; 19 Fed. Cas. 18.

The limitation of two years under the Act of 1867 (section 5057, R. S.), applied to an action by the assignee to collect assets as well as to suits relating to specific property. Payson v. Coffin, 4 Dill. 386; 5 id. 573; 19 Fed. Cas. 18.

That the assignee did not know of his right to certain assets of the bankrupt until after the two years' limitation had expired does not affect the bar of limitation. Norton v. De La Villebeuve, 18 Fed. Cas. 417.

On all matured claims and demands the cause of action accrues to the assignee at the date of the assignment; all others from their maturity or at the time when an action will lie, and under the Act of 1867 he must sue within two years from these dates respectively. Ibid.

A trustee in bankruptcy had secured a decree setting aside a general assignment for the benefit of creditors. Later, he brought suit to recover from a third party money in his possession, the title to which had passed to the voluntary assignee. Held, under the Act of 1867 (section 5057, R. S.), that the cause of action had not accrued until the entry of the decree setting aside the assignment. Tappan v. Whittemore et al., 15 Blatchf. 440; 23 Fed. Cas. 695.

The bankrupt had concealed from the assignee the facts attending a certain transaction, and the latter had no knowledge of them until within three months before the bringing of the suit. It was held that the statute of limitations in section 2 of the Act of 1867 did not bar the action. Tyler v. Angevine, 15 Blatchf. 536; 24 Fed. Cas. 458.

Held, under the Act of 1867, that a suit by an assignee to collect claims must be brought within two years from the time when the cause of action accrued to the assignee; and that when the assignee filed his complaint within two years, but the summons was not issued or served until more than two years, the action was barred. Walker v. Towner, 4 Dill. 165; 29 Fed. Cas. 57.

The petition in bankruptcy was filed December 31, 1868, and an assignee appointed April 1, 1869. The latter brought suit on a debt which accrued February 5, 1867. The court held that the limitation of two years in section 2 of the Act of 1867 did not apply. Smith v. Crawford, 6 Ben. 497; 22 Fed. Cas. 489.

The doctrine of equity that a statute of limitations cannot be made use of to carry out a fraud does not apply to a preferred creditor who conceals the transaction from other creditors. Anibal v. Heacock, 2 Fed. Rep. 169.

The wife of one of the bankrupts presented a petition asking that she be paid a royalty upon a copyright of certain books sold by the assignee in bankruptcy. The assignee defended on the ground that the copyright was transferred to her by her husband in fraud of his creditors. Held, that he was not barred from setting up this defense because he had not proceeded by suit within two years to recover the copyright, or to have the transfer set aside. In re English et al., 6 Fed. Rep. 276.

Under the Act of 1867 a suit might be brought by the assignee within two years after his election if the cause of action existed at the time of the filing of the petition. Trustees of M. B. F. & D. S. Co. v. Bosseiux et al., 3 Fed. Rep. 817.

One of three assignees in bankruptcy, who was indebted to the bankrupt, died. It was held that the statute of limitations (section 5057, R. S.) did not begin to run until the death of the assignee as to the action brought by his coassignees to recover the claim from his representatives. Doty et al. v. Johnson et al., 6 Fed. Rep. 481.

A creditor filed a petition to be paid from the proceeds of the sale of a vessel a lien for supplies and repairs. Held, that this was substantially a suit, and was covered by section 5057, R. S. In re Churchman et al., 5 Fed. Rep. 181.

Where the administrator of a decedent claims the proceeds of certain stocks in the hands of an assignee in bankruptcy, exceeding $5,000 in value, his remedy is a suit at law or in equity, and not a summary proceeding; and such an action was held to be within the two years' limitation of section 5057. In re Staib et al., 3 Fed. Rep. 200.

The statute of limitations is applicable in national as in state courts, and the limitation provision in the Bankrupt Act applies to all judicial controversies between the assignee in behalf of the bankrupt's estate and any person whose interest is adverse. In re Scovill, 4 Cliff. 549; 21 Fed. Cas. 856 (1878).

A bill in equity by an assignee in bankruptcy to set aside a conveyance by the bankrupt on the ground of a secret fraud is demurrable in the absence of an allegation that the fraud was discovered within the time allowed by the statute of limitations to avoid the bar. Lichtenauer v. Cheeny et al., 8 Fed. Rep. 876.

Held, under the Act of 1867, that where the bankrupt had concealed certain bonds, the statute of limitations did not begin to run against his assignee in bankruptcy until the discovery of the fraud. Martin v. Fullings, 3 Fed. Rep. 206.

The two years' limitation under the Act of 1867, between an assignee and a person claiming adverse interest, does not apply in case of a fraudulent dormant judgment until two years after steps have been taken to establish the judgment lien. Lehman v. LaForge, 42 Fed. Rep. 496.

When tax deeds were obtained and recorded after the lands had vested in the assignee in bankruptcy under the assignment, a suit by the assignee to set aside the deeds commenced more than two years after the making and recording of the deeds could not be maintained. Section 5057, R. S. Harvey v. Gage, 31 Fed. Rep. 275.

Where an assignee in bankruptcy refused to assume ownership of a right of action existing in the bankrupt, the right of action by a purchaser from the bankrupt is governed by the general statute of limitations and not by section 5057, R. S. Sessions v. Romada, 145 U. S. 29.

When an assignee in bankruptcy had, at the time of his appointment, information which would have led to a discovery of facts constituting the fraud on which the cause of action was based, it was held that suit thereon two years later was barred by the limitation of section 5057, R. S. Yancy v. Cothran, 32 Fed. Rep. 687.

Held, that the statute of limitations of the state of New York against suits to set aside fraudulent conveyances applied, and began to run, against the assignee in bankruptcy at the same time that it commenced to run against the creditors. Jones v. Smith, 38 Fed. Rep. 380.

A fraudulent agreement was made by the bankrupt and a third party by which composition was procured, and the assignee ordered by the court

to convey property to such party. The compromise was afterward set aside. Held, that the time the compromise remained in force should be deducted in determining the period of limitation under section 5057, R. S. Fairbanks v. Bank, 38 Fed. Rep. 630.

The court here decided what constituted sufficient information as to a trust deed and its contents to put the assignee in bankruptcy on inquiry. Greene v. Taylor, 132 U. S. 415.

The limitation in section 2 of the Act of 1867 was held to apply only to property held adversely to a bankrupt or his assignee. Davis v. Anderson et al., 6 N. B. R. 145; 7 Fed. Cas. 103.

The statute of limitations does not begin to run until the fraud is discovered as to an action to recover property concealed by the party, or for redress against a fraud which, by its nature, remains a secret. Fullings v. Fullings, 3 N. J. L. J. 270; 9 Fed. Cas. 991.

An assignee in bankruptcy sought to recover certain property, or the proceeds thereof, from a third person to whom it was alleged they were fraudulently transferred. The latter opposed the proceedings on the ground that the amount claimed by the assignee was larger than he was liable for, and also on account of a claim for services, which was disputed by the assignee. The court decided that he was not a "person claiming an adverse interest touching the property and rights of property of such bankrupt," within the meaning of section 2 of the Act of 1867. In re Krogman, 5 N. B. R. 116; 14 Fed. Cas. 866.

A petition to recover certain property and books of account alleged to have been fraudulently transferred was held to be "a suit at law or in equity" within the meaning of section 2 of the Act of 1867, fixing a limitation on such suits. In re Krogman, 5 N. B. R. 116; 14 Fed. Cas. 866.

Under the Act of 1867 the limitation of the time for the commencement of actions by an assignee in bankruptcy began to run from the time of his appointment. Bank v. Sherman, 101 U. S. 403.

An action for the recovery of insurance money was held to be barred by section 5057, R. S., notwithstanding the bankrupt had omitted to disclose that the policies had been taken out and assigned before bankruptcy to a trustee for his daughters. Avery v. Cleary, 132 U. S. 604; Cleary v. Ellis Foundry Co., id. 612.

Section 8 of the Act of 1841, fixing a two years' limitation for suits by or against an assignee in bankruptcy, was held to apply only to suits growing out of disputes in respect to property rights of the bankrupt which came into the hands of the assignee, and to have no reference to suits growing out of the dealings of the assignee with the property after it came into his hands. In re Conant, 5 Blatchf. 54; 6 Fed. Cas. 257.

[See notes to §§ 2, 17 and 70.]

[For an important opinion, affirming the authority of the district court under the Act of 1898 to grant an injunction against the sale of property under the process of a State court until a petition in bankruptcy can be filed against the debtor, see notes to section 71.]

COMPOSITIONS.

§ 12. **Compositions, when Confirmed.**— (a.) A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in

court the schedule of his property and lists of his creditors, required to be filed by bankrupts.

(b.) An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

(c.) A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

(d.) The judge shall confirm a composition if satisfied that

(1.) It is for the best interests of the creditors;

(2.) The bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and

(3.) The offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

(e.) Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

Application.

In the case cited, the circuit and district courts decided that the provision for compositions in the Laws of 1867 is constitutional, and discussed the requirements of the resolution and other proceedings in such cases. In re Reiman et al., 7 Ben. 455; 12 Blatchf. 562; 20 Fed. Cas. 490, 500.

Composition proceedings must be had in the district court where the bankruptcy proceedings are pending. In re Wronknow, 15 Blatchf. 38; 18 N. B. R. 81; 30 Fed. Cas. 718.

After the adjudication of a firm, one member may submit a proposition for a composition, notwithstanding the firm had made an assignment for the benefit of creditors under a state law prior to the adjudication. Pool v. McDonald et al., 15 N. B. R. 560; 19 Fed. Cas. 987.

An order refusing a discharge in bankruptcy is not a bar to composition proceedings. In re Joseph, 24 Fed. Rep. 137.

The mere fact that the bankrupts have been refused a discharge in bankruptcy on a specification of objection is not an absolute bar to a composition under the Act of 1867. A discharge releases a bankrupt from his debts whether there are or are not assets for distribution. Under a composition, a sum of money is paid in satisfaction of the debt. In re Odell, 16 N. B. R. 501; 18 Fed. Cas. 575.

A petition for composition should set forth its nature and terms, and the belief of the petitioner that it will be accepted by the required number. So held under the Act of 1867. In re Holmes, 8 Ben. 74; 12 Fed. Cas. 393.

A debtor, injured creditors, or the assignee in bankruptcy, can recover money paid to secure signatures to a composition, and it is no defense to such an action that the composition deed was invalid. Bean v. Brookmire, 2 Dill. 108; 2 Fed. Cas. 1132.

United States Act of 1874 and British Act of 1868 concerning compositions compared; extracts quoted in parallel columns. In an elaborate and carefully prepared opinion, Judge Treat discusses the law and procedure in composition, the respective rights of creditors and of the bankrupt, and analogies of the United States statute with the British act. In re Scott, 15 N. B. R. 73; 21 Fed. Cas. 805 (1876).

Hearing.

Where a composition is pending, the bankrupt can be compelled to appear before the register and produce his books for examination on the question whether the composition was for the interest of all concerned. In re Ash, 17 N. B. R. 19; 2 Fed. Cas. 6.

In a proceeding for a composition, the books of the bankrupt must be produced if desired and time given for an examination before the vote is taken. At such meeting the register, or other presiding officer, has power to regulate the proceedings and decide questions subject to review by the court. The examination of the debtor should be conducted like that of a witness in a court, and the proceedings should be recorded. In re Holmes, 8 Ben. 74; 12 Fed. Cas. 393.

Where the object of a meeting of creditors to consider a proposed composition failed by reason of mistakes on the part of attorneys, it was held that the court might order a second meeting. In re McDowell, 6 Biss. 193; 16 Fed. Cas. 69.

It is not competent for a resolution of composition to provide that upon the delivery of the notes agreed to be given to the creditors, all the property in the hands of the assignee shall be delivered to the bankrupt and the assignee discharged. In re Hyman et al., 8 N. B. R. ; 12 Fed. Cas. 1135.

At a meeting of creditors to vote upon a composition, the bankrupt was absent. After a recess, the bankrupt not appearing for examination, a resolution accepting a composition was passed. Creditors who had opposed an adjournment to permit the attendance of the bankrupt, objected to the confirmation on the ground of his absence, and the fact that he had not been examined. The court held that the objections were too late

after the adoption of the resolution. In re Little, 19 N. B. R. 234; 15 Fed. Cas. 600.

At a meeting for final action on a proposed composition, the report of the register will be assumed to be a full and true record of all the proceedings had before him. In re Spencer, 18 N. B. R. 190; 22 Fed. Cas. 914.

It was held that a composition by which a previous assignment under a state law was ratified might be varied at a subsequent meeting of creditors by providing for the distribution of the assets in bankruptcy, no creditors being prejudiced thereby. In re Dumahaut et al., 15 Blatchf. 20; 7 Fed. Cas. 1177.

When a bankrupt asks for a meeting of creditors for the purpose of proposing a composition, he will be held primarily liable for the register's costs under the Act of 1867. In re Griffin, 8 Ben. 328; 11 Fed. Cas. 5.

Who May Participate in Proceedings.

In determining whether the required number of creditors had joined in a composition, those who are fully secured need not be taken into account. In re Van Auken et al., 14 N. B. R. 425; 28 Fed. Cas. 946.

Attaching creditors have no right to vote in composition proceedings, and are affected by the composition. In re Shields, 4 Dill. 588; 15 N. B. R. 532 (1877); 21 Fed. Cas. 1308.

The Amendatory Bankrupt Act of 1874 contemplated that secured creditors should not vote at a composition. A creditor who had attached, therefore, could not vote until he should release the attachment. In re Scott, 15 N. B. R. 73; 21 Fed. Cas. 805 (1876).

In composition proceedings, where there are joint and separate debts, the creditors may direct a general composition if there is no objection, but if any creditor objects there must be a vote by the separate classes of creditors. In re Spades et al., 6 Biss. 448; 22 Fed. Cas. 848.

Creditors who have proved their debts under a void voluntary assignment may nevertheless vote upon a resolution for a composition in bankruptcy proceedings. In re Troth, 1 Fed. Rep. 405.

Objections to the vote of a creditor upon a proposed composition on the ground that his claim is fictitious cannot be made for the first time on the motion for confirmation. They should be made before the vote is taken, or if the facts are discovered afterward, then as soon as possible. In re Block et al., 18 N. B. R. 328; 3 Fed. Cas. 715.

At a meeting of creditors of a firm to act on a proposed compromise, individual creditors have no right to vote. In re South Boston Iron Co., 4 Cliff. 343; 22 Fed. Cas. 812.

A creditor who considers himself secured, though he is not, is not entitled to consideration in determining whether the required number have assented to the composition. In re Snelling, 19 N. B. R. 120; 22 Fed. Cas. 719.

The word "creditors" in the provisions of the Act of 1867, relating to compositions, was held to mean all persons having debts provable in bankruptcy. Ex parte Trafton, 2 Low. 505; 24 Fed. Cas. 122.

Workmen having privileged debts were held entitled to vote for a composition only on the excess of their debts over $50, made privileged by law. In re O'Neil, 14 N. B. R. 210; 18 Fed. Cas. 715 (1876).

Where a creditor had appeared at a meeting to consider an offer of composition, and subsequently withdrawn, it was held that he could be counted as voting against the composition. In re Richmond et al., 18 N. B. R. 362; 20 Fed. Cas. 736.

Creditors of a bankrupt gave a power of attorney to sign a composition with directions that it was not to be accepted if made for less then 20 per cent., one-half payable in six months and one-half in twelve months from February 16th. The attorney signed a composition for 20 per cent. payable in six and twelve months, from March 16th.

The difference in time was held to be fatal to the proceedings. In re Alexander, 9 Ben. 99; 1 Fed. Cas. 347.

Creditors who have not proved their debts, but were allowed to intervene in the proceedings prior to adjudication, cannot take part in subsequent proceedings for a composition. In re Bryce et al., 19 N. B. R. 287; 4 Fed. Cas. 520

The question being whether one-half of the creditors had assented to a composition, damages for a tort not assessed were excluded. In re Bailey et al., 2 Woods, 222; 2 Fed. Cas. 362.

A creditor can vote on claims which he bought up for the express purpose of opposing the composition. Ex parte Jewett, 2 Low. 393; 13 Fed. Cas. 580.

Only creditors who have proved their claims are qualified to take part in a meeting to receive a proposed composition. Oral or written testimony may be received at such a meeting when it is pertinent to the question whether the composition is for the best interest of creditors. In re Keller et al., 18 N. B. R. 331; 14 Fed. Cas. 233.

Held, under the Act of 1867, that only creditors who had proved their debts could vote upon accepting a proposition to have a composition. In re Matthers, 17 N. B. R. 225; 16 Fed. Cas. 1093.

Objections to Confirmation.

The court will interfere with a proposed composition on the application of a single creditor who charges fraud or deceit, to examine the charges. In re Keiler, 18 N. B. R. 36; 14 Fed. Cas. 216.

The fact that the debtor retains possession of his assets is no ground for refusing to confirm a composition which was made before adjudication. In re Van Auken et al., 14 N. B. R. 425; 28 Fed. Cas. 946.

The necessary number of creditors having signed, and it appearing that the interests of all creditors would be promoted by the terms of a composition, it must be confirmed, notwithstanding the bankruptcy was brought about fraudulently and collusively. In re Allen, 17 N. B. R. 157; 1 Fed. Cas. 439.

After the refusal of a discharge, a majority of the creditors voted to accept a composition for one-half of 1 per cent. On the objection

of two creditors who had opposed the discharge, the court refused to confirm the composition. In re Hannahs, 8 Ben. 553; 11 Fed. Cas. 446.

The court will confirm a composition where it appears that the dissenting creditor would not receive any more than the proposed amount if the administration should proceed, no collusion having been established. In re Keiler, 18 N. B. R. 36; 14 Fed. Cas. 216.

The court confirmed a resolution of composition which provided that the payment should be secured by a satisfactory bond running to three persons named in the resolution as a committee of creditors. In re Lewis, 14 N. B. R. 144; 15 Fed. Cas. 456.

A court will not confirm a composition, although accepted by the required number of creditors, when it clearly appears that the bankrupt has given preference to certain creditors in fraud of the law prior to the proceedings. In re Jacobs, 18 N. B. R. 48; 13 Fed. Cas. 271.

The required number of creditors accepted and confirmed an offer of composition which provided for the payment of the debts by unsecured notes to be delivered within ten days, and that immediately upon the recording of the resolution of composition, the property of the bankrupt should be restored to them and the proceedings discontinued. The court refused to confirm the composition. In re Janeway, 8 Ben. 267; 13 Fed. Cas. 347.

Where the bookkeeper of the bankrupt, without the knowledge of the latter, paid money to one creditor, who thereupon assented to a composition, and offered money to another, who refused, the court refused to confirm the composition, notwithstanding the required proportion of creditors had signed without counting the one who had received money. In re Bennett et al., 8 Ben. 561; 3 Fed. Cas. 205.

A payment by the bankrupt to one creditor of a larger sum than was paid to others, for the purpose of inducing him to accept a composition, is unlawful, and so is a promise to pay money to a creditor's agent in consideration that he will urge the acceptance of a compromise. Bullene v. Blain, 6 Biss. 22; 4 Fed. Cas. 646.

A discharge does not release a bankrupt as to debts omitted from his schedule; and it follows that an omission cannot be urged to an opposition to the confirmation of a composition. In re Greenebaum et al., 1 Chi. L. J. 599; 10 Fed. Cas. 1156.

It is not a valid objection to a composition that some of the signers acted in a representative capacity. In re Greenebaum et al., 1 Chi. L. J. 599; 10 Fed. Cas. 1156.

The creditors of a corporation consented to a composition for 75 per cent., payable in installments running for three years, and providing that its property should be restored to it. The president, who was also at one time treasurer, while serving in the latter capacity had used the funds of the company for his own benefit, and the trustees had settled with him without criminal prosecution. The court, under the circumstances of the case, and in view of the character and conduct of the managing officers of the corporation, refused to confirm the composition. In re McKnab & H. M. Co., 18 N. B. R. 388; 16 Fed. Cas. 313.

An order to record a composition will not be refused on account of delay that did not amount to laches in securing the required number of signatures. In re Cavan, 19 N. B. R. 303; 5 Fed. Cas. 318.

The bankrupt procured friends to pay more in composition than his estate could pay in bankruptcy. Judge Lowell held that such a composition "stands well before the court." In re Snelling, 19 N. B. R. 120; 22 Fed. Cas. 719.

A composition for 25 per cent. with an agreement that as soon as the first installment of 5 per cent. should be paid, the bankrupt should resume possession of his property, when it appeared that before his bankruptcy he had misappropriated funds belonging to another, was not confirmed. In re Bloch et al., 18 N. B. R. 328; 3 Fed. Cas. 715.

The fact that a bankrupt has committed acts which would be ground for denying a discharge will not prevent the court from confirming a resolution of composition. In re Troth, 19 N. B. R. 253; 24 Fed. Cas. 214.

The fact that the assets of the debtor by the terms of the composition are allowed to remain in the hands of the debtor does not necessarily show that the settlement is not for the best interest of all concerned. In re Wilson, 18 N. B. R. 300; 30 Fed. Cas. 98 (1878).

The circuit court for the eastern district of Michigan, reversing the district court, held that where a resolution of composition has been passed after an examination of the debtor, though there are badges of fraud, the district court should not refuse to confirm without a hearing upon notice to the bankrupt and the creditors voting with the majority. In re Weber Furniture Co., 13 N. B. R. 559; 29 Fed. Cas. 536.

The question being whether a composition should be confirmed, the court held that it should consider what the creditors would receive in the course of proceedings, and not what the debtor might possibly be able to pay them. In re Whipple, 2 Low. 404; 29 Fed. Cas. 929.

The bankrupt had satisfied some of his debts at large discounts, and his brother had purchased others. This was held to be no reason for refusing to confirm a composition which had been approved by two-thirds of the creditors holding the majority of the claims independent of those held by the brother. In re Walshe, 2 Woods, 225; 29 Fed. Cas. 110.

In the absence of a flagrant disparity, the confirmation of a composition will not be refused merely on a representation that the estate could pay more. In re Welles, 18 N. B. R. 525; 29 Fed. Cas. 619.

The absence of one of the debtors at a creditors' meeting, he having been excused by a majority, is not of itself sufficient cause for rejecting a composition. In re Wronknow, 15 Blatchf. 38; 18 N. B. R. 81; 30 Fed. Cas. 718.

The judgment of the requisite majority in composition proceedings should be allowed to prevail unless obtained without sufficient consideration, or by unfairness or undue influence. In re Wronknow, 15 Blatchf. 38; 18 N. B. R. 81; 30 Fed. Cas. 718.

On the final hearing to confirm a composition, the court of bankruptcy referred the matter back to the register to report the facts, and the circuit

court, through Justice Bradley, approved of the action, holding that the court of bankruptcy need not regard the ordinary rules of procedure in the exercise of its equitable jurisdiction. In re Walshe, 2 Woods, 225; 29 Fed. Cas. 110.

Judge Lowell held under the Act of 1867, that a resolution for composition providing for the payment of debts in notes was faulty; but that the payment might be made in installments represented or secured by notes. In re Langdon, 2 Low. 387; 14 Fed. Cas. 1099.

A composition that provided for a payment to be secured by a satisfactory bond to be given to three persons as a committee of creditors, was confirmed, with the understanding that such committee should decide whether the bond was satisfactory. In re Louis et al., 7 Ben. 481; 15 Fed. Cas. 942.

The law devolves upon creditors the duty of accepting or rejecting propositions for a composition; and if they acted in the full knowledge of the condition of the bankrupt's affairs, and of their rights, the court will not withhold confirmation. In re Greenebaum et al., 1 Chi. L. J. 599; 10 Fed. Cas. 1156.

Effect of Confirmation.

The acceptance and recording of a composition do not dissolve existing attachments; they are only dissolved by an assignment under the Law of 1867. In re Clapp et al., 2 Low. 468; 5 Fed. Cas. 819.

The confirmation of a composition, and the performance of the conditions by the bankrupt suspends the functions of the assignee, and the delivery of any property by him to the bankrupt in accordance with the terms of the composition discharges him from any further liability therefor. In re August, 19 N. B. R. 161; 2 Fed. Cas. 208.

The court dissolved an injunction to prevent a creditor from levying an execution on the personal property of a bankrupt after a composition had been confirmed. In re Tytle et al., 14 N. B. R. 457; 15 Fed. Cas. 1195.

After the confirmation of a composition, a secured creditor is confined to the security, and has no claim against the bankrupt for a deficiency. Ibid.

It is not the resolution of composition, but the payment of the amount agreed upon that discharges the bankrupt. In re Hurst, 13 N. B. R. 455; 12 Fed. Cas. 1020.

When a composition has been made, accepted, and approved by the court, and its terms complied with by the debtor, he is discharged from the claims of all creditors, whose names, addresses, and the amounts due them have been given in his statement, and no other discharge is necessary or proper. In re Beckett, 2 Woods, 173; 3 Fed. Cas. 27.

Under the amendment of 1874 authorizing the court to enforce the provisions of a composition in a summary manner, it can enforce only the executory provisions of the composition, and the taking by a creditor of the money and notes provided for by a composition is not an executory provision which can be so enforced. In re Hinsdale, 7 Ben. 9; 12 Fed. Cas. 207.

After the time for paying a composition is passed, the court cannot enjoin a creditor who refuses to accept the money from suing the debtor for his claim. The latter may plead the composition in defense. Where the composition is still pending, that is, until all notes given for it fall due, the rule is otherwise, and the court may enjoin a creditor from suing the debtor on an unsecured debt set forth in his schedules. Ibid.

Under sections 12 and 13 of the amendatory Act of 1874, a judgment of the district court declaring a composition final was held not to be reviewable. In re Lloyd, 15 Fed. Cas. 717.

A discharge by proceedings in composition was held to be within the meaning of section 5116, R. S. Ruiz v. Eickerman, 5 Fed. Rep. 790.

A debtor, having made a composition with certain creditors, paid another creditor, who had refused to unite in the composition, out of a fund which was not included in the schedules. It was held that the creditors signing the composition could not recover from the creditor who received such payment. National Park Bank v. People's Bank et al., 25 Int. Rev. Rec. 169; 1 Fed. Cas. 1229.

The bankrupt had promised to pay a certain percentage of his debts in composition proceedings, and his wife had agreed in writing to unite in a mortgage on the homestead to secure the installments. Before the confirmation, the bankrupt absconded. A motion by the assignee to compel the bankrupt and his wife to execute the notes and mortgage in accordance with the composition was denied, and the court held that the only relief, if any, could be found in a plenary suit. In re Remsen, 9 Ben. 260; 20 Fed. Cas. 531.

An order of composition cannot deprive a nonconsenting creditor of a vested right. In re Stowell, 24 Fed. Rep. 468.

When a creditor neglects to prove his claim in composition proceedings until after the final distribution, he is not entitled to relief. In re Starr, 56 Fed. Rep. 142.

Judge Choate, of the district court for the southern district of New York, held that a composition in bankruptcy discharged fiduciary debts. In re Rodgers et al., 18 N. B. R. 252; 20 Fed. Cas. 1085.

Proceedings in composition may bind creditors notwithstanding they are irregular as to other parties. In re Rodger et al., 18 N. B. R. 381; 20 Fed. Cas. 1088.

Judge Emmons reached the conclusion from an examination of English and American cases that in the absence of fraud, accident or mistake, the action of the majority of the creditors upon a composition is conclusive as to the amount. In re Weber Furniture Co., 13 N. B. R. 559; 29 Fed. Cas. 536.

A resolution of composition provided that the debtor having executed certain notes, his property should remain in his control; that for better security a receiver be appointed, who should not, however, take possession of the property until a default should be made by the debtor in payment of any of the notes. It was held that the court was not bound by the provisions as to receiver, and might appoint another, or, in its dis-

cretion, proceed to administer the estate in bankruptcy. In re Wilson, 16 Blatchf. 112; 30 Fed. Cas. 93 (1879).

While a composition was pending to pay creditors 70 per cent., one of them demanded and received payment in full before signing. He was required to return the amount to the assignee, and having done so was allowed to prove his debt and receive dividends. Brookmire et al. v. Bean, 3 Dill. 136; 4 Fed. Cas. 243.

When a composition had been arranged and confirmed but not carried out, the creditor cannot thereupon proceed against the bankrupt for the collection of his debt for the reason that the bankruptcy proceedings are still pending, and he is confined to them. In re Bayly, 19 N. B. R. 73; 2 Fed. Cas. 1085.

Where a composition contained an agreement that it should not be binding on anyone unless signed by all the creditors, the provision was held to apply to secured as well as to unsecured creditors. Kinsing's Assignee v. Bartholomew et al., 1 Dill. 156; 14 Fed. Cas. 642.

Certain creditors, who had filed a petition for the review of an order confirming a composition, refused to receive payment of notes given in accordance with its terms. The money was ordered to be paid into court, and, the bankrupt having refused to do so, the court made a summary order upon him to pay the notes on the demand of the creditors. In re Reynolds, 16 N. B. R. 176; 20 Fed. Cas. 618.

Where a bankrupt fails to perform or attempt a performance in accordance with an arrangement in composition, a creditor may bring an action to recover his debt. Ransom v. Geer, 12 Fed. Rep. 607.

Held, that section 17 of the amendatory Act of 1874 did not repeal section 5117, R. S., and that a composition did not release the bankrupt from a fiduciary debt. Wilmot v. Mudge, 103 U. S. 217; Bayley v. University, 106 id. 11.

A creditor was not bound by composition proceedings when his name did not appear in the schedule to the bankrupt or otherwise. In re Blackmore, 11 Fed. Rep. 412.

A creditor who has exhausted his security, and has a deficiency judgment, may issue an execution upon the same against the property of the bankrupt, notwithstanding composition proceedings. Cavanna v. Bassett, 3 Fed. Rep. 215.

An action in a state court by a creditor seeking to recover his whole debt from a bankrupt who has effected a composition will not be restrained by the court of bankruptcy. In re Negley, 20 Fed. Rep. 499.

A settlement with creditors by composition takes the place of bankruptcy proceedings, and a discharge thus obtained is as complete as a discharge in bankruptcy. Mayer v. Gourden, 26 Fed. Rep. 742.

The performance of the conditions of a lawful composition under section 17 of the amendatory Act of 1874 was held to be tantamount to a discharge. Boynton v. Ball, 121 U. S. 457.

A creditor who had advanced money to the bankrupt with an understanding that the latter should not be pressed for payment was held

entitled to share in the dividends under a composition, no misrepresentation having been made to the bankrupt's creditors. In re Lane et al., 2 Low. 333; 14 Fed. Cas. 1070.

A bankrupt is by his discharge released from liability for breach of contract with a creditor who assented to a composition, although the creditor was ignorant of the breach at the time of giving assent. Fowle v. Parke, 48 Fed. Rep. 789.

[See notes to § 14.]

SETTING ASIDE.

§ 13. **Compositions, when Set Aside.**— (a.) The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

A composition will not be annulled by an innocent mistake of the debtor as to the amount due a creditor; and the correct amount may be proved. Ex parte Trafton, 2 Low. 505; 24 Fed. Cas. 122.

Two years after a composition had been made and the dividends distributed, creditors who had received their dividends filed a petition to set aside the composition on the ground that some of the votes in support of it had been purchased. In the meantime, the bankrupts had engaged in a new business and contracted new debts to a large amount. Before the composition, the petitioning creditors had sufficient knowledge to put them on their inquiry. Judge Blatchford held that it was too late to raise the question as to the means by which the composition was accepted, and rejected the application to set it aside. In re Herrman et al., 9 Ben. 436; 12 Fed. Cas. 19.

Where the vote of an unqualified creditor did not affect the result, a composition will not be set aside by reason of such vote. In re Walshe, 2 Woods, 225; 29 Fed. Cas. 110.

If a creditor is induced to vote for, or to sign a composition by any means different from or beyond the composition, whether known to the debtor or not, his vote so influenced operates as a fraud on the other creditors, and makes the composition voidable by any of them. A majority arrived at by bribery, though the bankrupt be no party to it, is no fair majority; and it seems that if a vote is influenced by the expectation of advantage, though without positive promise, it cannot be considered an honest vote. In re Sawyer, 14 N. B. R. 241; 21 Fed. Cas. 559 (1876).

The fact that full security is not taken does not make a composition uncertain. In re Wilson, 18 N. B. R. 300; 30 Fed. Cas. 98 (1878).

An order vacating a compromise, obtained without notice, may be set aside by the bankruptcy court without notice. In re Dunn, 53 Fed. Rep. 341.

Irregularities in a proceeding respecting a composition which are not tainted with fraud are not fatal to its validity. In re Henry et al., 9 Ben. 449; 11 Fed. Cas. 1148.

It was held to be no ground to set aside a compromise that each of the bankrupts received a sum out of the partnership fund when that fact was known to the creditors before voting in favor of accepting the proposition. In re South Boston Iron Co., 4 Cliff. 343; 22 Fed. Cas. 812.

Acts regularly done in accordance with a composition which is subsequently set aside are valid. Ex parte Hamlin, 2 Low. 571; 11 Fed. Cas. 367.

A sale which might have been avoided by the assignee in bankruptcy will not be disturbed in a proceeding to set aside a composition after it has been fully executed. In re Shaw, 9 Fed. Rep. 495.

A composition is not avoided by a delay in the payment which was caused by legal obstructions. In re Kohlsaat, 18 N. B. R. 570; 14 Fed. Cas. 833.

A composition which is fraudulent as to some creditors can only be attacked by those who are injured. In re Hamlin et al., 8 Biss. 122; 11 Fed. Cas. 369.

A petition having been filed to set aside a composition on the ground that certain creditors had been paid more than others, the court ordered the clerk to call a meeting of creditors for the purpose of taking testimony, the petitioners to have the affirmative, and the clerk to report the testimony to the court. In re Diggles et al., 8 Ben. 36; 7 Fed. Cas. 693.

A composition was procured in consideration of a premium to be paid by the bankrupt to one of his creditors, the latter buying claims against the estate and voting them in the composition. The composition being confirmed, the creditor aforesaid received a transfer of the bankrupt's property according to agreement. It was held that the composition was fraudulent, and that the assignee of the bankrupt could recover the property thus transferred. Fairbanks v. Bank, 38 Fed. Rep. 630.

DISCHARGES.

§ 14. **Discharges, when Granted.**— (a.) Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

(b.) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in

interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has

(1.) Committed an offense punishable by imprisonment as herein provided; or

(2.) With fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

(c.) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

Time of Application.

It was held sufficient under the Act of 1867 if a bankrupt's application for a discharge was made before the discharge of the assignee. In re Smith, 9 Fed. Rep. 952. Or if made before the final disposition of the goods. In re Young, id. 146.

It was held under the Act of 1867 that any creditor having a provable debt could apply to the court after a year and require the bankrupts to have the question of discharge determined. In re Fowler, 2 Low. 122; 9 Fed. Cas. 515.

The time within which a petition for a discharge may be filed is considered in the case cited. In re Watson et al., 29 Fed. Cas. 423.

It was held under the Act of 1867 that the court had no power to grant a discharge when no assets have come into the hands of the assignee, and the bankrupt had allowed more than one year to elapse after the order of adjudication before making his application. In re Schenck, 5 N. B. R. 93; 21 Fed. Cas. 660 (1872).

In this case the bankrupt having failed to show any reasonable cause for delay in asking for his discharge, the court ordered that the creditors have leave to prosecute suits as if he had never been adjudged a bankrupt. In re Kelly, 3 Fed. Rep. 219.

The fact that a prior petition for discharge had been made out of season did not affect the jurisdiction of the court over a subsequent petition. In re White, 18 N. B. R. 107; 29 Fed. Cas. 966.

Where the bankrupt had delayed unreasonably in applying for a discharge, the court ordered that his creditors have leave to prosecute suits against him in like manner as if bankruptcy proceedings had not been instituted. In re Whiting, 29 Fed. Cas. 1055.

Under the Act of 1867 the district court could allow a bankrupt to withdraw his petition for discharge and subsequently file another. In re Svenson, 9 Biss. 69; 23 Fed. Cas. 480.

Justice Nelson, reversing Judge Blatchford, decided that under section 29 of the Act of 1867, a bankrupt must apply for a discharge within one

year only in cases where, by reason of no debts having been proved, and no assets having come into the hands of the assignee, he can apply for a discharge within less than six months. In re Greenfield, 6 Blatchf. 287; 10 Fed. Cas. 1165.

A discharge was refused because the debtor had not applied for over one year after filing a voluntary petition, no assets having come into the hands of the assignee. Subsequently, he filed a new petition, and was adjudged a bankrupt; and the court decided that the former refusal to grant the discharge by reason of delay did not bar the new proceedings. In re Farrell, 5 N. B. R. 125; 8 Fed. Cas. 1078.

Under the Act of 1867, where debts are proved and assets come into the hands of the assignee, the bankrupt need not apply for his discharge within one year from the adjudication. In re Holmes, 14 N. B. R. 209; 12 Fed. Cas. 402.

Judge Dillon held that a discharge might be granted under section 29 of the Act of 1867 though it was not applied for within a year, where there are no assets, and the delay was satisfactorily accounted for. In re Donaldson, 2 Dill. 546; 7 Fed. Cas. 882.

The court construed section 29 of the Act of 1867 as giving it discretion to grant or withhold a discharge, according to the circumstances of each case, when the application is made after the expiration of one year. In re Canady, 2 Biss. 75; 5 Fed. Cas. 2.

An adjudication was had in 1868, and no assets came into the hands of the assignee. In 1877 the bankrupt filed a petition for his discharge. The court refused the discharge on the ground of laches. In re Potteiger, 19 Fed. Cas. 1132.

The court refused to grant a discharge to the bankrupt who had no assets except such as were exempt, and who failed to apply within a year after adjudication, saying: "The privilege of a discharge is given by section 33 only to a person who has in all things conformed to his duty under the Act, and who has conformed to all the requirements of the Act. One of these requirements is that the application in this case be made within one year from the adjudication. The discharge is a favor granted on a compliance with the condition prescribed, and not a right." In re Martin, 2 N. B. R. 548; 16 Fed. Cas. 881.

It was held under the Act of 1867 that the district court had no power under any circumstances to grant a discharge unless it was applied for within one year after adjudication. In re Sloan, 13 Blatchf. 67; 22 Fed. Cas. 326. To the contrary effect, see In re Vorback, 1 Pac. Law Rep. 100; 28 Fed. Cas. 1278.

A petition for a discharge was filed after the election of an assignee, but before he qualified. The court dismissed it as premature. In re Wheeler et al., 5 Fed. Rep. 299.

An objection to the discharge of a bankrupt on the ground that his petition was prematurely filed cannot be waived, as it is the duty of the court to see that the law is complied with in all respects. Ibid.

Under the Act of 1867 the bankrupt was required to apply for discharge within one year from the adjudication. In re Wilmott, 2 N. B. R. 214; 30 Fed. Cas. 87 (1868).

The authority to apply for a discharge is derived entirely from the Bankrupt Act, and such application must be made within the time prescribed by law. In re Wood, 8 Ben. 237; 30 Fed. Cas. 422 (1875).

Although the Act of July 26, 1876, extends the time for applying for a discharge until the final disposition of the cause, a delay of six years in making the application, if opposed, is cause for refusing it. In re Harrison, 22 Fed. Rep. 528.

The bankrupts gave, as a reason for not having applied for a discharge, that a petition for review to the circuit court as to a controversy that had arisen during the proceedings, which was returnable November 19, 1870, had not been brought to a hearing by January, 1872. Held, that as they showed no reason for the delay in bringing the petition to a hearing, the delay in applying for a discharge was unreasonable. In re Belden, 5 Ben. 476; 3 Fed. Cas. 80.

Who May Oppose Discharge.

A creditor who has not proved his debt cannot be heard to oppose the discharge of the bankrupt. In re King, 1 N. Y. Leg. Obs. 22; 14 Fed. Cas. 507 (1842); In re Palmer, 18 Fed. Cas. 1019; In re Levy et al., 2 Ben. 169; 15 Fed. Cas. 431. But see the following:

It is not necessary to enable a creditor to oppose the discharge of a bankrupt that his debt should have been proved, if it is provable. In re Murdock, 1 Low. 362; 17 Fed. Cas. 1010.

It was held in this case that any creditor could oppose a bankrupt's discharge, whether he had proven a debt in bankruptcy or not. In re Shepard, 1 N. B. R. 439; 21 Fed. Cas. 1250 (1868).

Only creditors who have proved their debts, or are clearly shown to be *bona fide* creditors, can oppose the discharge of a bankrupt. In re Boutelle, 2 N. B. R. 129; 3 Fed. Cas. 1018.

A creditor who has not proved his debt is not entitled to oppose a bankrupt's discharge, nor one who was not injuriously affected by the acts complained of. In re Burk, Deady. 425; 4 Fed. Cas. 729.

A creditor who has not proved his debt, but whose claim is taken up on the bankrupt's schedules, is competent to file specifications in opposition to the discharge. In re Smith et al., 8 Blatchf. 461; 22 Fed. Cas. 390.

Under the Act of 1841 a creditor whose claim was contingent and liquidated could appear in opposition to the discharge of a bankrupt. Ex parte Traphagen, 1 N. Y. Leg. Obs. 98; 24 Fed. Cas. 134 (1842).

An equitable claim is sufficient to qualify the claimant to oppose a discharge. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

A creditor having a deficiency judgment has a claim which will be released by a discharge, and can be heard on the question of discharge. In re Stansfield, 4 Saw. 331; 22 Fed. Cas. 1061.

A creditor who has accepted a dividend from an unlawful assignment by the bankrupt may, nevertheless, object to his discharge, where he had no power to avoid such assignment. In re Kraft et al., 3 Fed. Rep. 892.

A fiduciary creditor cannot object to the discharge of the bankrupt, inasmuch as his debt is not affected by the discharge. In re Elliott, 2 N. B. R. 110; 8 Fed. Cas. 540.

The fact that a debt was created by fraud does not authorize the creditor to oppose the bankrupt's discharge. In re Doody, 2 N. B. R. 201; 7 Fed. Cas. 906.

A debt that was created by a fraud is not covered by a discharge in bankruptcy, and it follows that such a debt cannot be urged in objection to the discharge. In re Clarke, 2 N. B. R. 110; 5 Fed. Cas. 942; In re Bashford, 2 N. B. R. 72; 2 Fed. Cas. 1004.

When one creditor is about to withdraw his opposition to a discharge, the court may permit another to take it up and prosecute it. In re Houghton, 2 Low. 328; 12 Fed. Cas. 589.

Under the Act of 1867 a creditor could come in at any time before the hearing of the application of the bankrupt's discharge, and, upon proving his claim, file objections to a discharge. In re Longest, 7 Biss. 477; 15 Fed. Cas. 833.

A creditor who was not included in the schedule, who received no notice of the proceedings and did not prove his claim or receive any dividend, nevertheless cannot sue on his debt pending the discharge, but must appear and oppose the discharge. In re Archenbrown, 11 N. B. R. 149; 1 Fed. Cas. 1084.

A creditor to whom the bankrupt had executed a bond and mortgage was held competent to oppose his discharge, notwithstanding she had assigned the bond and mortgage to a third party to secure a debt, and subsequently assigned all her property and credits to a receiver appointed in pursuance of a creditor's bill. In re Ely, 5 Law Rep. 323; 8 Fed. Cas. 598 (1843).

After the return day of an order to show cause why the bankrupt should not be discharged, creditors sought to intervene in support of the objections filed by a creditor whose claim had been expunged. Their objections were dismissed. In re McDonald, 14 N. B. R. 477; 16 Fed. Cas. 36.

A creditor who had taken judgment against the bankrupt after adjudication sought to oppose the discharge. Held, that he could only be heard on filing a stipulation to satisfy his judgment of record if the discharge should be granted. In re Gallison et al., 2 Low. 72; 9 Fed. Cas. 1009.

A judgment creditor of a bankrupt filed a creditor's bill against him and his wife asking that a conveyance to the latter be set aside as fraudulent. The bill was dismissed on its merits. This was held to be an estoppel against the plaintiff in that suit from opposing the defendant's discharge in bankruptcy on account of such conveyance. In re Antisdel, 18 N. B. R. 289; 1 Fed. Cas. 1054.

The bankrupt or any creditor may contest the right of a creditor who has not proved his debt to oppose the discharge of the bankrupt. In re Oohaus, 6 Fed. Cas. 12 (1842).

A power of attorney in pursuance of form No. 26, under the Bankrupt Act of 1867, was held not to authorize the attorney to oppose the bankrupt's discharge. Creditors v. Williams, 4 N. B. R. 579; 6 Fed. Cas. 793.

The term "persons interested" in the Act of 1841 was held to mean those who have a direct interest in the matter immediately in controversy, and not merely a remote and contingent interest. A creditor may have a right to prove his debt without having a right to contest every question that arises in the course of the proceedings. Dutton et al. v. Freeman, 5 Law Rep. 447; 8 Fed. Cas. 175 (1842).

A creditor objected to the discharge of the bankrupt on the ground that the debt was contracted by fraud. The court decided that he could not be heard because, if the objection were true, the discharge would not affect the debt. In re Stokes, 2 N. B. R. 212; 23 Fed. Cas. 134.

Pleadings and Practice.

A pleading in opposition to a discharge must be specific. In re Hanson, 2 N. B. R. 211; 11 Fed. Cas. 463.

A court of bankruptcy will not entertain vague and general charges in opposition to a discharge. In re Tyrrel, 2 N. B. R. 200; 24 Fed. Cas. 479.

A discharge will not be refused upon vague and general specifications. In re Son, 2 Ben. 153; 22 Fed. Cas. 794.

A specification in opposition to a discharge that a debt was created by fraud was stricken out on motion. In re Rosenfield, 1 N. B. R. 575; 20 Fed. Cas. 1202.

Creditors opposing a discharge can only give proof of acts mentioned in their specifications. In re Rosenfeld, 2 N. B. R. 116; 20 Fed. Cas. 1198.

Under the Act of 1867, specifications in opposition to the discharge of the bankrupt were required to be precise and definite, and to set forth fully the particular facts relied upon. In re Eidom, 3 N. B. R. 106; 8 Fed. Cas. 385.

An averment that the affiant believes that the bankrupt has a large amount of personal property which he did not put into his schedule of assets is too vague to be triable. In re McIntire, 2 Ben. 345; 16 Fed. Cas. 150.

When a bankrupt has taken the required oath, his discharge should only be refused when some creditor has filed specifications of his opposition thereto, upon which an issue can be joined and the bankrupt can be heard in his own defense. In re Antisdel, 18 N. B. R. 289; 1 Fed. Cas. 1054.

Specifications in opposition to the bankrupt's discharge stated that he had destroyed books and papers with intent to defraud his creditors; that he removed books from the district with like intent, and that he had

bribed certain creditors to assent to his discharge. These were held to be too vague to be triable. In re Freeman, 4 Ben. 245; 9 Fed. Cas. 750.

Specifications in opposition to a discharge of the bankrupt on the ground that he had omitted property from his schedule and concealed it, should state what property he had concealed and omitted, and that the omissions were willful, fraudulent or negligent. In re Beardsley, 1 N. B. R. 304; 2 Fed. Cas. 1175.

It is not a sufficient specification of opposition to a discharge to allege that the bankrupt had concealed his effects or removed and destroyed books or writings. It must be stated what property was concealed, and what books and writings were destroyed. In re Condict, 19 N. B. R. 142; 6 Fed. Cas. 267.

Specifications of opposition to a discharge should be as exact as an indictment, and it is not sufficient to follow the words of the statute. In re Butterfield, 5 Biss. 120; 4 Fed. Cas. 919.

Under section 29 of the Act of 1867, a specification in opposition to discharge that alleged that the bankrupt "fraudulently neglected and willfully omitted to include" certain specified property was held insufficient, as there was no allegation of willful false swearing. In re Keefer, 4 N. B. R. 389; 14 Fed. Cas. 172.

Specifications in opposition to the discharge which stated that the bankrupt had concealed, etc., part of his property were held to be defective in that they did not describe the property so concealed. In re Mauson, 2 Ben. 332; 16 Fed. Cas. 1192.

A specification in opposition to discharge alleged that the bankrupt had mutilated and falsified his papers. Judge Blatchford held his allegation to be defective because it did not charge that the act was done with intent to defraud his creditors. In re Marston, 5 Ben. 313; 16 Fed. Cas. 857.

Allegations in opposition to the discharge of a bankrupt must be distinct, precise and specific. Where false swearing is charged it must aver that the false swearing was willful and upon material fact. In re Rathbone, 2 Ben. 138; 2 Fed. Cas. 307.

In specifications in opposition to the discharge of a bankrupt the allegations must be such as to give the bankrupt reasonable notice of the grounds relied upon. If false swearing is alleged, it must be charged to have been willful. In re Smith et al., 5 N. B. R. 20; 22 Fed. Cas. 398.

Held, that before a creditor could have a trial under section 31 of the Act of 1867, his specification of objections must be sufficiently definite to enable the court to see that there was a question of fact to be determined upon evidence outside of the records. In re Waggoner, 1 Ben. 532; 28 Fed. Cas. 1326.

All grounds against the discharge to be relied upon by opposing creditors, except those that appear upon the face of the proceedings, which the court is bound to notice even though no creditor oppose, must be assigned in writing as specifications. In re Seabury, 10 N. B. R. 90; 21 Fed. Cas. 900 (1874).

A specification filed against a discharge charging the concealment by the bankrupt, from his assignee, of "certain papers," the papers being a receipt for notes on which judgments were recovered, was held bad as being vague and uncertain. In re Carrier, 47 Fed. Rep. 438.

Certain creditors who had not proved their claims until after the return day of the order to show cause why the bankrupt should not be discharged, thereupon opposed the discharge. It was held that they could only be heard on distinct specifications of fraud. In re Balmer, 3 Hughes, 637; 2 Fed. Cas. 560.

It is proper practice for a bankrupt to demur to the grounds of opposition to his discharge when they are insufficient in law. In re Burk, Deady, 425; 4 Fed. Cas. 729.

The burden is on the opposing creditors to show the discharge should not be granted to the bankrupt. In re Herdic, 1 Fed. Rep. 242; In re O'Kell, 2 N. B. R. 105; 18 Fed. Cas. 633 (1868). To the same effect, under the Law of 1841, Anon., 3 N. Y. Leg. Obs. 155; 1 Fed. Cas. 1016 (1845).

The court may permit opposition to a discharge to be made at any time before the discharge is granted, but a creditor has no absolute right to oppose after the return day. In re Houghton, 2 Low. 328; 12 Fed. Cas. 589.

The trial on objections to the discharge of a bankrupt firm may be joint, but the verdicts and decrees must be several. In re George et al., 1 Low. 409; 10 Fed. Cas. 193.

Held, that a debtor owing both fiduciary and ordinary debts could not receive a discharge if opposed by any public or fiduciary creditor, and that there could be no certificate of partial discharge, or of general discharge with partial effect. In re Parker, 1 Pa. L. J. 370; 18 Fed. Cas. 1111.

Where a bankrupt has both partnership and individual debts, a majority in number and value of the aggregate of both was held sufficient to authorize his discharge under the Act of 1867, though a majority of either class did not assent. In re Morrell, 1 Hask. 542; 17 Fed. Cas. 779.

A court, on a proper showing, will grant relief where creditors fail to file specifications in opposition to a discharge within ten days from the return day to show cause. In re Grefe, 2 N. B. R. 329; 10 Fed. Cas. 1184.

Certain creditors made charges of fraud against a bankrupt, and asked for an order for his examination, and that the time to show cause why he should not be discharged be extended until after the examination. The register refused to make the order, but the court decided that it should have been made. In re Belden et al., 4 Ben. 225; 3 Fed. Cas. 79.

Where the bankrupts had been examined by the assignee on their application for a discharge, and the creditors had had an opportunity to examine them, the court refused to grant the petition of the latter for another examination. In re Isador et al., 2 Ben. 123; 13 Fed. Cas. 67.

It was held that the time fixed by rule 24 under the Bankrupt Act of 1867, within which specifications could be filed in opposition to a discharge, could be enlarged by the court either before or after the expiration of the time. In re Levin, 7 Buss. 231; 15 Fed. Cas. 421.

Where the counsel opposing the discharge is prevented from being present at the hearing by a sudden accident, and the opposing creditors are thereby prevented from being represented, the court will, on a proper showing of merits, recall the decree of discharge and reopen the case. In re Dupee, 2 Low. 18; 8 Fed. Cas. 108.

After a bankrupt has applied for his discharge, and notices have been given, though the discharge has not been formally granted, a creditor will not be allowed to file charges in opposition. If the creditor discovered frauds, the true course is for him to require the bankrupt to take his discharge, and then petition for a revocation. In re Fowler, 2 Low. 122; 9 Fed. Cas. 615.

Judge Nixon of the United States district court for New Jersey decided that the creditors must take the initiative in opposing the discharge of a bankrupt, and that if they were silent, the court could not be expected to refuse the discharge. In re Clark et al., 19 N. B. R. 301; 5 Fed. Cas. 855.

It was held in Maine that a creditor of a bankrupt, and accordingly his executor or legal representative, was not a competent witness on a hearing in opposition to his discharge; but where an executor is a trustee for the bankrupt, he may be a witness. In re Perley, 4 N. Y. Leg. Obs. 254; 19 Fed. Cas. 255.

A creditor of a bankrupt in voluntary proceedings is a competent witness in support of objections to his discharge filed by other creditors. In re Day, 7 Fed. Cas. 217.

A creditor who had made specifications in opposition to the discharge of the bankrupt, which were not sustained in proof, was held liable to the bankrupt for the costs of the hearing. In re Robinson et al., 3 N. B. R. 70; 20 Fed. Cas. 982.

A creditor opposing the discharge of a bankrupt cannot move to dismiss the petition for want of prosecution, but should move to have it set down for a hearing. In re Sutherland, Deady, 473; 23 Fed. Cas. 457.

After the day appointed for the hearing on an order to show cause why the bankrupt should not be discharged, a creditor cannot enter his appearance in opposition thereto. Ibid.

Held, under the Act of 1867, that where a meeting under an order to show cause why the bankrupt should not be discharged was adjourned, the time to file objections ran from the adjourned day. In re Tallman, 2 Ben. 404; 23 Fed. Cas. 678.

On an order to show cause why the bankrupt should not be discharged, evidence of fraud in the creation of a debt is not admissible. In re Tallman, 2 Ben. 348; 23 Fed. Cas. 678.

The court of bankruptcy may refuse a discharge of its own motion, in the absence of opposition by creditors, where the record shows that the bankrupt had done an act that would bar his discharge under the statute. In re Sohoo, 3 N. B. R. 215; 22 Fed. Cas. 780.

Where the court sustains exceptions to specifications in certain respects, it will be deemed to have disallowed them in all other respects. In re Duncan et al., 18 N. B. R. 42; 8 Fed. Cas. 9.

When creditors of a bankrupt oppose his discharge, their appearance may be entered and specifications filed, although several adjournments of the case have been had after the return of the rule to show cause against the discharge. In re Seabury, 10 N. B. R. 90; 21 Fed. Cas. 900 (1874).

The right to examine the bankrupt upon an application for a discharge extends to any creditor having a provable debt, whether it has been proved or not. In re Groome, 1 Fed. Rep. 464.

A creditor cannot have a new trial upon specifications in opposition to the discharge of a bankrupt even if he can prove facts happening since the discharge which would be competent in evidence. In re Corwin, 1 Fed. Rep. 847.

The bankrupt had been allowed to amend his schedules so as to include property which had been omitted. Held, that this did not conclude any creditor from availing himself of any specifications of opposition to the discharge which he would have had if the amendment had not been made. In re Watts, 3 Ben. 166; 29 Fed. Cas. 433.

In the case cited, the court held that it was its duty to examine the record before granting a discharge, and if it appeared that the bankrupt was not entitled thereto, to refuse it, although creditors interposed no objection. In re Wilkinson, 3 N. B. R. 286; 29 Fed. Cas. 1253.

The bankrupt having made a second application for a discharge after the first had been denied, it was held that the testimony of a witness on the first hearing was competent evidence on the second, the witness having died in the meantime. In re Brockway, 12 Fed. Rep. 69.

After issue joined on specifications against discharge and evidence taken, it is too late to amend by interposing a distinctly new ground of objection. In re Graves, 24 Fed. Rep. 550.

Proofs taken on first application for discharge are competent on second application. Indeed, a refusal of discharge is conclusive against the bankrupt, and is a bar to a second application. In re Brockway, 23 Fed. Rep. 583.

Creditors cannot object to the jurisdiction of the court in bankruptcy proceedings for the first time in opposition to the discharge. Allen v. Thompson, 10 Fed. Rep. 116.

The bankrupt must conform to all the requirements of the law before he can receive his discharge. In re Orne, 1 N. B. R. 79; 18 Fed. Cas. 823 (1867).

The bankrupt applied for a discharge in 1868, and it was alleged in opposition that in 1861 he had made a fraudulent assignment, and that he still had in his hands a large amount of assets that he pretended to have included in that assignment. The court said: "Whether such a state of facts, if proved, would not amount to a fraud within the meaning of the twenty-ninth section which would defeat a discharge is a question which I am not inclined to pass upon finally by denying a motion like the present. Leave will accordingly be given to take proofs in support of these averments." In re Moore, 2 Ben. 325; 17 Fed. Cas. 661.

Objections to a discharge must rest upon the particulars designated in the statute as causes for refusing it. Such matters as concern only the regularity of the proceedings should be brought forward on the first notice, or after the decree of bankruptcy they will be regarded as waived. In re Banks, 1 N. Y. Leg. Obs. 274; 2 Fed. Cas. 755 (1843).

Objections were filed to the discharge of a bankrupt on the grounds that he had placed his property in the hands of his wife; that he had withheld his books and papers, and that he had been guilty of fraud. This was held to be too vague, but Judge Blatchford allowed the creditor to amend his specifications and referred the matter to a register to take further testimony. In doing so he said: "The issues to be tried and decided will be the allegations in the specifications, and, as the bankrupt has taken and subscribed the oath required by section 29 of the Act (1867), the burden will be upon the creditor to show that the bankrupt has forfeited his title to the discharge by having done some of the things specified in section 29, as grounds for withholding a discharge." In re Hill, 2 Ben. 136; 12 Fed. Cas. 146.

A creditor seeking to oppose the discharge of a bankrupt must observe the rules prescribed by the supreme court of the United States in that behalf. In re McVey, 2 N. B. R. 257; 16 Fed. Cas. 352.

Judge Blatchford held under the Act of 1867 that the withdrawal of the bankrupt's appearance, and a default on a motion for an adjudication, would not estop them from denying the allegations in the petition in subsequent proceedings for their discharge. In re Lathrop et al., 3 N. B. R. 46; 14 Fed. Cas. 1175.

It was claimed before Judge Drummond that the Act of 1867 did not authorize the discharge of an involuntary bankrupt. The judge decided, however, that if the bankrupt had acted in good faith, there was no reason why he should be compelled to go through the form of filing a voluntary petition. In re Clark, 2 Biss. 73; 5 Fed. Cas. 840.

The court will lend its aid by process to a bankrupt to establish facts necessary to his discharge. In re Pierson, 10 N. B. R. 193; 19 Fed. Cas. 668.

It was held to be proper practice under the Act of 1867, where there was no opposition to the discharge of a bankrupt, to continue the proceedings from day to day to suit his convenience. In re Sutherland, Deady, 473; 23 Fed. Cas. 457.

An adjournment of the examination of a bankrupt having been had, it was held that proceedings upon an order to show cause why the discharge should not be granted should be continued until after such examination. In re Mauson, 1 N. B. R. 271; 16 Fed. Cas. 1194.

Proceedings on an order to show cause why the bankrupt should not be discharged may properly be adjourned until the completion of an examination of the bankrupt then pending. In re Thompson, 2 Ben. 166; 23 Fed. Cas. 1018.

When there are no objections to a discharge of a bankrupt, it is proper practice for the court to allow the schedules to be amended to correct

omissions, and to continue the case for further proceedings. In re Townsend, 2 Fed. Rep. 559.

Where the case on the return day of the notice to show cause against a discharge is adjourned without day, the proceedings are terminated and a new notice is required. Adjournments should be taken on the return day, and subsequently, in order that full examinations of the bankrupts and others may be had, if desired, on the question of discharge. In re Sechendorf, 2 Ben. 462; 1 N. B. R. 626; 21 Fed. Cas. 957 (1868).

The bankrupt is entitled to his discharge only upon the showing he makes on the return of the rule to show cause against it. He should not be permitted to come in afterward and obtain it without further notice, and upon an entirely different showing. In re Seaman, 19 N. B. R. 332; 21 Fed. Cas. 913 (1879).

Sufficient Grounds of Opposition.

It was not necessary that the bankrupt should have been convicted of any of the offenses made misdemeanors by section 44 of the Bankrupt Act of 1867 in order to make them available in opposition to a discharge. In re George et al., 1 Low. 409; 10 Fed. Cas. 193.

A preference barred a discharge under the Act of 1867 only when the bankrupt contemplated bankruptcy, or had good grounds for believing that he was insolvent; but it was not necessary that the creditor receiving it should have known that his debtor was insolvent. In re Gay, 1 Hask. 108; 10 Fed. Cas. 105.

A discharge was refused where the bankrupt, after he had stopped business, and was actually insolvent, conveyed parts of his property to a creditor to an amount exceeding the claim, and soon after filed a petition in voluntary bankruptcy. In re Pearce, 2 N. Y. Leg. Obs. 267; 19 Fed. Cas. 50.

Where it is charged in opposition to the bankrupt's discharge that he has not made a full disclosure of his property, the facts must be established by strong circumstantial evidence, in the absence of direct testimony. Ibid.

A debtor made an assignment for the benefit of his creditors, and four days afterward filed a petition in bankruptcy. He denied on the hearing that when he made the assignment he had any intention of proceeding in bankruptcy, but, there being no other proof to that effect, his discharge was refused. In re Brodhead, 3 Ben. 106; 4 Fed. Cas. 201.

The petitioner in involuntary bankruptcy had carried on an extensive business in his wife's name, but had kept no account of his dealings as her agent, and she had never paid him or agreed to pay him anything for his services. This was held to be sufficient ground for refusing the discharge. In re Hill, 2 Ben. 349; 12 Fed. Cas. 147.

A discharge was refused where a bankrupt had conveyed all of his individual property to his wife in consideration of a loan made twenty years previous and barred by the statute of limitations. In re Antisdel, 18 N. B. R. 289; 1 Fed. Cas. 1054.

On the day that the Act of 1841 wen into effect, a debtor confessed judgment in favor of one of his creditors to an amount exceeding the value of his property. A discharge was refused though the debt was actually due. In re Chase, 22 Vt. 649; 5 Fed. Cas. 517 (1842).

A bankrupt held a note against his father. Shortly before the commencement of proceedings, he took certain exempt property in part payment, and then sold the note to a brother-in-law, receiving other exempt property in payment. A discharge was refused. In re Leavitt, 1 Hask. 194; 15 Fed. Cas. 122.

Under the Act of 1867 the court refused a discharge to a bankrupt who had made an assignment to secure a pre-existing indebtedness, while he was insolvent, and when the giving of the security was not a part of the original transaction. In re Foster, 2 N. B. R. 232; 9 Fed. Cas. 520.

Where a debtor made several conveyances to his wife in January, and filed his voluntary petition in bankruptcy in May, it was held that he was not entitled to a discharge. In re Adams, 3 N. B. R. 561; 1 Fed. Cas. 83.

The specification in opposition to the discharge of the bankrupt was that he had concealed property in the hands of his brother. He stated on examination that the money had been paid to his brother in discharge of an indebtedness; but the proof of the existence of the indebtedness was unsatisfactory. The discharge was refused. In re Goodridge, 2 N. B. R. 324; 10 Fed. Cas. 613.

A bankrupt who has possession of any property or books of account of the firm of which he was a member, and fails to disclose them to his assignee in separate proceedings, is not entitled to a discharge. In re Beal, 1 Low. 325; 2 Fed. Cas. 1107.

An act that would otherwise prevent the discharge of a bankrupt cannot be excused because it was done on the advice of counsel, except under circumstances that negative any possibility of bad faith. In re Finn, 8 N. B. R. 525; 9 Fed. Cas. 72.

An alien who has made preferences while residing out of the United States, and subsequently came within this country and filed a petition in bankruptcy, is not entitled to a discharge. In re Goodfellow, 1 Low. 510; 11 Fed. Cas. 594.

A firm had made a general assignment for the benefit of its creditors, and the assignee had set apart some of the assets to one of the partners as exemptions. Later, the partners commenced proceedings in voluntary bankruptcy. The court held that under the circumstances a discharge could not be granted. In re Croft et al., 8 Biss. 188; 6 Fed. Cas. 838.

A discharge was refused to a bankrupt who procured the assent of one of his creditors by a promise to pay him "all he ever owed him when he got able." In re Ekings, 6 Fed. Rep. 170.

The bankrupt had received a part of the profits of a firm, his interest standing in his wife's name. He stated in his inventory that he had no assets. It was held that he was guilty of perjury and concealment,

and a discharge was refused. In re Rathbone, 1 N. B. R. 536; 20 Fed. Cas. 314.

A decree by a state court that a conveyance of real estate by the bankrupt to his wife was void was held not to be conclusive in bankruptcy; but at the same time the court of bankruptcy held that the conveyance was made with intent to defraud his creditors, and thereupon denied a discharge. In re Sumner, 10 Ben. 34; 23 Fed. Cas. 382.

The fact that the bankrupt had contracted fiduciary debts before the passage of the act will not prevent his discharge as to other debts, but the misapplication of trust funds after the passage of the act is sufficient to defeat a discharge from any debt. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

In the case cited, the court refused to grant a discharge where the assent of one of the creditors was procured by a pecuniary consideration, notwithstanding it was paid by a third person. In re Whitney et al., 2 Low. 455; 29 Fed. Cas. 1068.

Under section 29 of the Act of 1867, it was held to be a sufficient reason for refusing a discharge that the bankrupt had concealed the title of property by placing it in some other person's name. This decision was made in a case where the bankrupt had made a pretended sale which was declared fraudulent by a state court, and had failed to enter the property covered by the fraudulent sale, on his schedule. In re Hussman, 2 N. B. R. 737; 12 Fed. Cas. 1073.

Setting forth a false and fictitious debt in a schedule is an admission of it against his estate, and a bar to a discharge under the Act of 1867; but the burden is on the objecting creditors to show that such debt was false and fictitious. In re Orcutt, 4 N. B. R. 538 (Quarto 176); 18 Fed. Cas. 757.

A bankrupt who had suffered a judgment to be taken against him by default in favor of his brother, and all his property sold and the proceeds applied upon the judgment, was denied a discharge under subdivision 9 of section 5110, R. S. In re Pitts, 8 Fed. Rep. 263.

A discharge was refused under the Act of 1867 (section 5110, R. S.), where the bankrupt had lost money by gaming, and thereby reduced his assets. In re Signer, 20 Fed. Rep. 236.

Where a creditor had consented to the discharge of a bankrupt for a valuable consideration, it was held that he could not set up the transaction in opposition to a discharge, but that other creditors could do so. In re Bright, 9 Fed. Rep. 491.

A bankrupt who loses at gambling is not entitled to a discharge, regardless of whether his winnings have exceeded his losings. So held under the Act of 1867. In re Stewart, 21 Fed. Rep. 398.

A discharge was refused to a bankrupt who had sold a piano which he had taken up on his schedule and paid the proceeds to his attorneys in the bankruptcy proceedings. In re Jessup, 19 Fed. Rep. 94.

Under the Act of 1867, a discharge was refused to a bankrupt who had lost property in gaming, notwithstanding he acquired it in the same

way, and had no other occupation but that of gambling. In re Marshall, 1 Low. 462; 16 Fed. Cas. 827.

Insufficient Grounds of Opposition.

The fact that a bankrupt had contracted a debt of a fiduciary character before the passage of the Bankrupt Act was held not to prevent his discharge as to other debts. In re Lord, 5 Law Rep. 258; 15 Fed. Cas. 872 (1842).

Held, under the circumstances of the case, that conveyances made by a bankrupt to his sons more than eight months prior to the filing of his petition were not a sufficient reason for refusing a discharge. In re Jewett, 3 Fed. Rep. 503.

A discharge will not be refused on account of conveyances made long before bankruptcy, where there was not evidence of a willful concealment of property. In re Boynton, 10 Fed. Rep. 277.

It is not a sufficient reason for refusing a discharge that the bankrupt made accidental omissions from his schedules. In re Boynton, 10 Fed. Rep. 277.

A discharge will not be denied to a bankrupt on account of acts or omissions by a former partner. In re Heller, 9 Fed. Rep. 373.

The payment of attorney's fees by the bankrupt was held not to be such a preference as would bar a discharge under the Act of 1867. In re Boynton, 10 Fed. Rep. 277.

A creditor will not be allowed to object to the bankrupt's discharge by reason of the omission of his debt from the schedule with his own consent. In re Whetmore, Deady, 585; 29 Fed. Cas. 921.

It was held not to be necessarily a ground for refusing a discharge that the bankrupt had made gifts to his wife and daughter previous to the commencement of proceedings, notwithstanding they were voidable by his creditors. In re Warne, 12 Fed. Rep. 431.

It is not an evidence of fraud on the part of a bankrupt that he omitted certain claims from his schedule which were in fact worthless. In re Pearce, 2 N. Y. Leg. Obs. 267; 19 Fed. Cas. 50.

A specification in opposition to discharge on the ground that the bankrupt had transferred certain shares of stock to one of his creditors was overruled upon proof that the bankrupt in fact had no interest in the stock in question. In re Penn et al., 5 N. B. R. 288; 19 Fed. Cas. 155.

It was objected to the discharge of a bankrupt that he had omitted the names of three creditors from his schedule. It appearing that the omission was with their consent, the objection was overruled. In re Needham, 1 Low. 309; 17 Fed. Cas. 1275.

Ten years before the passage of the Bankrupt Act, the bankrupt had conveyed property to his wife, and he omitted this property from his schedules. It was not established that he had any interest in the property by a secret trust. These facts were held not to be sufficient to justify the court in refusing a discharge. In re Murdock, 1 Low. 362; 17 Fed. Cas. 1010.

The bankrupts had paid certain creditors to vote for a composition. The composition failed, and under further proceedings, the bankrupts applied for a discharge. The court decided that an act done during the proceedings for a composition, notwithstanding it came within section 29 of the Act of 1867, could not be set up to prevent a discharge. In re Morris et al., 19 N. B. R. 111; 17 Fed. Cas. 785.

The bankrupt had retired from business many years before, having sold all his property, but leaving some of his debts unpaid. Thereafter he lived upon his salary as a clerk, and paid his rent and other expenses therefrom. The court held that the creditors to whom he had become indebted while engaged in trade could not take advantage of these payments in opposition to his discharge. In re Locke, 1 Low. 293; 15 Fed. Cas. 734.

It was held under the Act of 1841 that where a debtor in contemplation of bankruptcy had confessed judgments in a large amount for which executions were issued and all of his property sold he was entitled to a discharge with the assent of a majority in interest of his creditors who had not been so preferred. Anon., 1 N. Y. Leg. Obs. 349; 1 Fed. Cas. 1015 (1843).

After the passage of the Act of 1841, but before it went into operation, certain debtors made an assignment for the benefit of preferred creditors. It was held that this would not prevent their discharge. In re Chadwick et al., 5 Law Rep. 457; 5 Fed. Cas. 398 (1842).

It was held under the Act of 1867, that if the formal requirements of the law had been complied with, a discharge could only be refused on some ground set forth in section 29. In re Elliott, 2 N. B. R. 110; 8 Fed. Cas. 540.

A bankrupt sold property for cash to procure means to defray the expenses of the proceedings. The property was sold for a fair price, and the amount realized was reasonable. This was held not to be ground for refusing a discharge. In re Keefer, 4 N. B. R. 389; 14 Fed. Cas. 172.

An allegation in opposition to a discharge that the bankrupt swore falsely in his examination must be proved beyond a reasonable doubt. In re Moore, 1 Hask. 134; 17 Fed. Cas. 663.

It was held under the Act of 1867 that transactions prior to the passage of the law could not be heard in opposition to the discharge of a bankrupt. In re Moore, 1 Hask. 134; 17 Fed. Cas. 663.

The fact that a bankrupt omitted an equity of redemption from his schedule will not prevent his discharge. In re Moore, 1 Hask. 134; 17 Fed. Cas. 663.

The court granted a discharge under the Act of 1867 over an objection specifying an act of bankruptcy committed a long time before the passage of the bankrupt law. In re Keefer, 4 N. B. R. 389; 14 Fed. Cas. 172.

Construing section 29 of the Act of 1867, Judge Dillon said: "But I am not prepared to hold that merely for not taking a too hopeful view of his affairs, and for making payments in the course of his

business with the *bona fide*, though mistaken, expectation that he can keep along without going into bankruptcy, there being no actual design to favor or prefer, the intention of congress was to deprive the party of the right to his discharge, if otherwise entitled to it." In re Brent, 2 Dill. 129; 4 Fed. Cas. 59.

To justify the court in refusing a discharge under the Act of 1841, it was held that the creditors must show that the petitioner has concealed property. It is not sufficient to show that he had owned property in past years, and that he had managed it improvidently and squandered it. In re Bailey, 1 N. Y. Leg. Obs. 18; 2 Fed. Cas. 358 (1842).

Judge Nelson decided under the Act of 1867 that giving a preference more than four months before the proceedings in bankruptcy, or making a transfer more than six months before, would not prevent the discharge of the bankrupt. In re Harper, 6 Chi. Leg. News, 279; 11 Fed. Cas. 572.

Payments of money or transfers of property to preferred creditors made before the passage of the Act of 1867, though fraudulent, were held not to bar the discharge of the bankrupt. In re Hollenshade, 2 Bond, 210; 12 Fed. Cas. 346.

The Act of 1867 does not authorize the court to refuse a discharge for a fraud committed before the passage of the Act. In re Jones, 2 Low. 451; 13 Fed. Cas. 932.

When the bankrupts had suffered great losses by trusting their business to a relative, who had defrauded and deceived them, and there was nothing to show complicity on their part, the court decided that discharges must be granted to them. In re Beatty et al., 3 Ben. 233; 3 Fed. Cas. 8.

When one partner assuming to act for the firm gave a fraudulent preference without the knowledge or assent of the other partner, it was held that the latter should not be refused a discharge. In re Leavitt, 1 Hask. 194; 15 Fed. Cas. 122.

Where a preferred creditor abandons his security and proves his debt, the preference is condoned and cannot be urged in opposition to the bankrupt's discharge. In re Conner et al., 1 Low. 532; 6 Fed. Cas. 312.

A bankrupt swore on examination that he had paid certain creditors in full a short time before filing his petition. It was held that this was not sufficient ground for withholding a discharge. In re Burgess, 3 N. B. R. 196; 4 Fed. Cas. 725.

Transactions that occurred long before the passage of the Bankrupt Act of 1867, were held to be available for use in opposition to the discharge of the bankrupt. In re Cretiew, 5 N. B. R. 423; 6 Fed. Cas. 810.

Payments to domestic servants cannot be urged in opposition to a discharge, nor payments to an attorney for past and future services. In re Rosenfeld, 2 N. B. R. 116; 20 Fed. Cas. 1198.

The burden of proof is on creditors opposing a bankrupt's discharge to show that assets have been concealed. Mutilation of bankrupt's books is not conclusive of fraud, but the circumstances may be explained. In re Noonan, 18 Fed. Cas. 297 (1869).

The omission from a schedule of property not known by the bankrupt as belonging to him is not a "concealment," and is no bar to a discharge. In re Parker, 4 Biss. 501; 18 Fed. Cas. 1110.

It appeared that the bankrupt had paid the attorney's fees of certain creditors, but that before such payment was made or promised, they had stated that they would not oppose his discharge. It was held that the facts were not sufficient to prevent the discharge. In re Mauson, 2 Ben. 412; 16 Fed. Cas. 1193.

Under the Law of 1867 a fraudulent conveyance or preference made before the passage of the Act were not available in opposition to a discharge. In re Rosenfield, 1 N. B. R. 575; 20 Fed. Cas. 1202.

There is nothing in the Bankrupt Act of 1867 that prohibits a debtor from requesting a creditor to file a petition against him to be adjudged a bankrupt. In the absence of fraud, such request will not constitute a bar to the bankrupt's discharge. In re Ordway, 19 N. B. R. 171; 18 Fed. Cas. 760.

Under the Act of 1867 there might be a preference which would support proceedings in involuntary bankruptcy, and yet not bar the discharge of the debtor. In re Pierson, 10 N. B. R. 107; 19 Fed. Cas. 661.

The execution of an assignment for the benefit of creditors less than a month before the debtor filed a petition in bankruptcy, was held not to bar a discharge in the absence of actual fraud, under the Act of 1867, notwithstanding it was an act of bankruptcy under section 39. In re Pierce et al., 3 N. B. R. 258; 19 Fed. Cas. 630.

The property of the bankrupt was under attachment when he filed his petition, and he subsequently confessed judgment and permitted the property to be sold. This was held not to be an objection to his discharge under the Act of 1841. In re Reed, 3 N. Y. Leg. Obs. 262; 20 Fed. Cas. 417 (1844).

A discharge will not be refused for the reason that a debt was created through the frauds and false representations of the bankrupt. In re Rathbone, 2 Ben. 138; 20 Fed. Cas. 307.

It was held not to be a sufficient ground for refusing the discharge of a debtor that he had wasted his estate, and made fraudulent purchases. In re Rodgers, 1 Low. 423; 20 Fed. Cas. 1104.

The omission of a debt from a schedule, which was not intentional, is not sufficient ground for refusing a discharge. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

It was held not to be a sufficient ground for refusing a discharge under the Act of 1867, that the bankrupt had paid the attorney's, notary's and register's fees of certain creditors. In re Venson, 9 Biss. 69; 23 Fed. Cas. 480.

The mere omission of property from the bankrupt's schedule, without intent to conceal or defraud, was held not to be sufficient ground for refusing a discharge. In re Smith, 1 Woods, 478; 22 Fed. Cas. 412.

Whether the specification be that the bankrupt has concealed his effects or has sworn falsely to his inventory, the act must appear to be in-

tentional in order to preclude a discharge. In re Wyatt, 2 N. B. R. 288; 30 Fed. Cas. 719 (1868).

Where a discharge was opposed on account of a fraudulent act of the bankrupt, it was held that such act must have occurred within such time before the adjudication as to make it an act of bankruptcy under the bankrupt law. In re Woolfskill, 5 Saw. 385; 30 Fed. Cas. 415 (1879).

The discharge of the bankrupts was opposed on the ground that the debt was created while they were acting in a fiduciary capacity. It was held that this was no ground for withholding a discharge, and that the creditor must show the fact in reply to a plea of the discharge in a suit on her claim. In re Tracy et al., 2 N. B. R. 298; 24 Fed. Cas. 112.

"Proper Books of Account."

What constitute proper books of account is considered at length in the case cited. In re Smith, 16 Fed. Rep. 465.

Failing to enter amounts withdrawn for stock speculation is ground for refusing a discharge, for not keeping proper books of account. In re Hunt, 26 Fed. Rep. 739.

The court refused to permit amendments to specifications in opposition to a discharge of the bankrupt for the purpose of opposing the discharge of one of the partners who had nothing to do with the books, which were kept by the other partners to whose discharge he had consented. In re Smith, 16 Fed. Rep. 465.

Incorrect method of bookkeeping, and failing to enter items of sales for cash, but ascertaining total cash sales each day by deducting amount on hand each morning, was held to be not such improper bookkeeping as would prevent a discharge under the Act of 1867. In re Graves, 24 Fed. Rep. 550.

Where imperfections and omissions in the bankrupt's books of account are relied upon in opposition to a discharge, they should be clearly specified. If the books are such that his financial condition can be ascertained with substantial accuracy, the discharge should not be refused. In re Frey, 9 Fed. Rep. 376.

A discharge was denied where the bankrupt had kept no cash-book or invoice-book, and where the books that he had kept failed to explain satisfactorily the condition of his business affairs. In re Brockway, 12 Fed. Rep. 69.

A failure to enter notes and drafts of a large amount which the bankrupts had received and discounted was held to be sufficient reason for withholding a discharge. In re Williams, 13 Fed. Rep. 30.

The bankrupt had sworn that he had not kept certain books of account, but later he found and produced them. In the absence of evidence that his false swearing was intentional, a discharge was granted. In re Warne, 10 Fed. Rep. 377.

The bankrupt, who was a member of a firm, had omitted from the firm books certain accommodation notes given by him individually, and also the receipt of certain money from an agent of the firm, which, how-

ever, were entered on a separate book. The omissions were held not to be sufficient to prevent his discharge. In re Jewett, 3 Fed. Rep. 503.

The books that were produced did not constitute proper books of account, but it appeared that one of the bankrupts, who had absconded, took with him the cash-book. Held, that the facts did not constitute a sufficient objection to a discharge. In re Kraft et al., 4 Fed. Rep. 523.

Held, under the Act of 1867, that the existence of obscurity in the books of a bankrupt did not offer any reason to refuse a discharge, when the obscurity was explained, and the entries were made without fraud or deceit. In re Townsend, 2 Fed. Rep. 559.

In the case cited, a discharge was refused for a failure to keep proper books of account, notwithstanding such books as the bankrupt kept, with the invoices on file, might have enabled an accountant to make out proper statements. In re Bernia, 5 Fed. Rep. 723.

After selling out his store the bankrupt engaged in the business of buying and selling apples, partly on his own account and partly in connection with another. His omission to keep books of account was held to deprive him of his right to a discharge. In re Tyler, 4 N. B. R. 104; 24 Fed. Cas. 457.

The bankrupts were dealers in bark and lumber. They had no other cash-book but their bank account, but each member of the firm kept a book showing disbursements, and to whom made. It was held that these constituted proper books of account. In re Marsh et al., 19 N. B. R. 297; 16 Fed. Cas. 792.

Under the Act of 1867, a failure by a merchant to keep proper books of account was a ground for refusing a discharge, whether or not the omission was with fraudulent intent. In re Solomon, 2 N. B. R. 285; 22 Fed. Cas. 787.

A bankrupt kept his cash account on slips, and only entered the footings of these slips on his cash-book, so that it was impossible to tell for what purpose the items were disbursed. These were held not to be proper books of account. In re Perry et al., 19 Fed. Cas. 264.

A retail merchant testified that he kept no invoice-book, but that he preserved his invoices carefully so that a complete account of all goods received by him could be made out, and also kept a set of books in usual form. The court overruled an objection to his discharge on the ground that he had not kept proper books of account. In re Reed, 12 N. B. R. 390; 20 Fed. Cas. 417.

Some years before the passage of the Bankrupt Act of 1841, the debtor had committed a fraud in an assignment for the benefit of his creditors. It was held that this would not bar his discharge under that act. In re McFarlan, 16 Fed. Cas. 89 (1842).

A bankrupt who had not kept a cash-book, journal or ledger was refused a discharge on the ground that he had not kept proper books of account. At the same time it was held that the absence of the cash-book alone would not be sufficient to prevent a discharge if receipts and payments appeared from other books. In re Hannahs, 8 Ben. 475; 11 Fed. Cas. 445.

A discharge was refused where the bankrupt was a member of a firm which had sold its stock to another firm consisting of the same partners with one other, and had made no entry of the sale on the books of the old firm. In re Colcord, 2 Hask. 455; 6 Fed. Cas. 33.

A discharge will not be refused on account of accidental omissions of entries in the bankrupt's books of account. In re Burgess, 3 N. B. R. 196; 4 Fed. Cas. 725.

The books of a bankrupt firm did not show the condition of accounts between the partners. A discharge was refused. In re Jorey et al., 2 Bond, 336; 13 Fed. Cas. 1122.

The bankrupts had kept no cash-book for ten months and it was impossible to ascertain their condition from their books of account. A discharge was refused. In re Bellis et al., 4 Ben. 53; 3 Fed. Cas. 135.

"Proper books of account" are such as will enable a competent accountant to ascertain the condition of the bankrupt's affairs. In re Wartenbach, 11 N. B. R. 61; 2 Fed. Cas. 956.

A discharge was refused to a bankrupt who was a tradesman and who had not kept an invoice or stock-book. In re White, 2 N. B. R. 590; 29 Fed. Cas. 966.

The bankrupt had engaged for a short time in the business of buying and selling tobacco and cigars, and in that business had kept no books of account. The business had been closed out, and there were no debts due to or from him arising from that business. Held, that the fact that he had not kept books of account could not be urged against his discharge. In re Freidberg, 19 N. B. R. 302; 9 Fed. Cas. 815.

S. and B. were associated in business under an agreement which was held not to amount to a partnership. B., the bankrupt, kept proper books of account with his customers, but nothing to show the state of his accounts with S. A discharge was refused. Later, a pass-book was produced in which the transactions between B. and S. were entered every day. Thereupon a discharge was granted. In re Blumenthal, 18 N. B. R. 555, 575; 3 Fed. Cas. 757, 758.

By the twenty-ninth section of the Bankrupt Act of 1867, it was provided that no discharge shall be granted if the bankrupt being a merchant or tradesman has not subsequently to the passage of the act kept proper books of account. If account-books are not kept the discharge must be refused even though such failure was the result of no intent to defraud creditors or to conceal the condition of his business. The keeping of mere memorandum-books which fail to show particulars and construction of debts due to and by the creditors and debtors of the bankrupt is not keeping of such proper books as are required by the twenty-ninth section of the Act. In re Numan, 1 Chi. Leg. News, 123; 18 Fed. Cas. 96.

The bankrupts had failed to enter on their books several important transactions relating to their property. A discharge was refused. In re Grieves et al., 15 Alb. L. J. 167; 11 Fed. Cas. 3.

Where a trader's books were not posted to date, and the accounts were kept on separate pieces of paper, a charge of failure to keep proper books of account will not be sustained. In re Hammond et al., 1 Low. 381; 11 Fed. Cas. 380.

The bankrupt kept a wharf where he sold wood and coal. Books of account were kept by a skillful clerk, but for some time previous to his discharge he had no cash account. A discharge was refused. In re Littlefield, 1 Low. 331; 15 Fed. Cas. 624.

The burden of proof is on a creditor who opposes a discharge on the ground that the bankrupt had not kept proper books of account. In re Banks, 1 N. Y. Leg. Obs. 274; 2 Fed. Cas. 755 (1843).

Vague parol statements about the condition of the bankrupt's books of account will not justify the court in refusing a discharge; the evidence must be conclusive. In re Batchelder, 1 Low. 373; 2 Fed. Cas. 1012.

Notwithstanding only one partner was responsible for the failure to keep proper books of account, a discharge will be refused to both. In re George et al., 1 Low. 409; 10 Fed. Cas. 193.

A memorandum-book in which the bankrupt kept the time of employees was held not to be "proper books of account" under the Act of 1867. In re Garrison, 5 Ben. 430; 10 Fed. Cas. 49.

"Proper books of account" need not be in any particular form; but they must be sufficient to show the condition of the bankrupt's affairs. In re Gay, 1 Hask. 108; 10 Fed. Cas. 105.

A bankrupt who conducted a strictly cash business, which had been closed out several months before the filing of his petition, was granted a discharge, notwithstanding he had failed to keep any books of account. In re Keach, 1 Low. 335; 14 Fed. Cas. 156.

It will not excuse a debtor who has failed to keep proper books of account that the failure was entirely due to his bookkeeper. In re Hammond et al., 1 Low. 381; 11 Fed. Cas. 380.

Books of account were held to be sufficient that presented a true account of his business, and not of his personal expenses. In re McCarthy, 15 Alb. L. J. 293; 15 Fed. Cas. 1252.

The cash-book of the bankrupt firm failed to show in an intelligible or proper manner the nature and character of the receipts and disbursements entered in it. A discharge was refused. In re Mackay et al., 4 N. B. R. 66; 16 Fed. Cas. 156.

Miscellaneous.

When a bankrupt's discharge is refused, a creditor who has proved his debt is restored to his former rights and remedies. Dingee v. Becker, 9 N. B. R. 508; 7 Fed. Cas. 724.

A discharge in bankruptcy cannot be set up in support of an injunction to restrain the enforcement of a judgment in a state court; it should have been pleaded in bar to the action. Goodrich v. Hunton, 2 Woods, 137; 10 Fed. Cas. 608.

A discharge in bankruptcy after an attachment, but before judgment, can be pleaded in bar, so as to prevent the attaching creditor from perfecting his attachment by a judgment. Ex parte Foster, 2 Story, 131; 9 Fed. Cas. 508.

A verified answer in a suit in equity by the bankrupt may be used against him in bankruptcy. Anon., 1 N. Y. Leg. Obs. 349; 1 Fed. Cas. 1015 (1843).

The record is conclusive of the jurisdiction of a court in bankruptcy unless attacked by a direct proceeding. Until the decree has been set aside in such a proceeding, the discharge of a bankrupt cannot be opposed on the ground that the statements in the petition as to residence are untrue. In re Ives et al., 5 Dill. 146; 13 Fed. Cas. 181.

A discharge does not in any manner reinvest the bankrupt with control of the estate which he has surrendered in bankruptcy. In re Anderson, 2 Hughes, 378; 1 Fed. Cas. 831.

The presumption is that a bankrupt upon his discharge has taken the final oath required, when such oath is not found of record. In re Young, 3 Dill. 239; 30 Fed. Cas. 865 (1875).

A plea of discharge under the Act of 1841 which set out the certificate and discharge was held to be good. White v. Howe et al., 3 McLean, 291; 29 Fed. Cas. 1019 (1842).

A discharge in bankruptcy is waived by failure to plead it. Fowle v. Parke, 48 Fed. Rep. 789.

Courts of law or equity will not take notice of a discharge in bankruptcy as a defense unless it is pleaded. It cannot be taken advantage of by motion and affidavit. Fellows et al. v. Hall et al., 3 McLean, 281; 8 Fed. Cas. 1132 (1843).

The discharge of an assignee in bankruptcy does not deprive the court of its jurisdiction to grant a discharge to the bankrupt. In re Forsyth, 4 Fed. Rep. 629.

In an action at law the defendant pleaded a discharge in bankruptcy. The reply set forth that the court of bankruptcy had no jurisdiction. The court held that the court had general jurisdiction in bankruptcy, and as the record showed jurisdiction, it should not be impeached when introduced collaterally. The plaintiff then offered evidence of fraud under a general allegation, and the court held that specific acts must be alleged so as to give notice to the bankrupt. Lathrop v. Stewart, 6 McLean, 630; 14 Fed. Cas. 1185 (1855); Lathrop v. Stuart, 5 McLean, 167; 14 Fed. Cas. 1185 (1850).

An omission to enter an order refusing a discharge may be corrected *nunc pro tunc*, but not to the prejudice of any intervening rights of third persons. In re Drisco, 14 N. B. R. 541; 2 Low. 430; 7 Fed. Cas. 1092, 1104.

[As to a discharge by proceedings for a composition, see notes under section 12, subhead, "Effect of Confirmation."]

REVOCATION.

§ 15. **Discharges, when Revoked.**— (a.) The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

A discharge under the Act of 1867 was annulled upon evidence that the consent of a creditor was obtained by a promise that his debt should be paid in full. In re Marshal, 3 Fed. Rep. 220.

A corporation was declared bankrupt upon its own petition. A year later a stockholder who had knowledge of the facts, filed a petition to have the proceedings vacated. The petition was denied on the ground of laches. In re Balt. Co. D. Ass'n, 2 Hughes, 259; 2 Fed. Cas. 572.

H. received his final discharge in May, 1869. In February, 1871, two creditors applied to have the discharge set aside, and proved that H. had willfully omitted them from his schedules of creditors and liabilities, and that they had no knowledge of said fact until after the granting of the discharge. The discharge was set aside. In re Herrick, 7 N. B. R. 341; 12 Fed. Cas. 41.

A surety of the bankrupt on a bond to dissolve an attachment, paid the debt of a creditor for the purpose of preventing his opposition to the discharge. This having been done without the knowledge of the bankrupt, it was held that it would not invalidate the discharge. Ex parte Briggs, 2 Low. 389; 4 Fed. Cas. 113.

The court refused to revoke a discharge which was inadvertently granted when the application was not made until the time had expired for a review by the circuit court, and the bankrupt had engaged in new business and contracted new debts. In re Buchstein, 9 Ben. 215; 4 Fed. Cas. 540.

The knowledge that is sufficient to bar a creditor's right to move for the revocation of a discharge must be such that he could have availed himself of it before the return day of the order to show cause why the discharge should not be granted. In re Fowler, 2 Low. 122; 9 Fed. Cas. 615.

Creditors petitioned to have the discharge of the bankrupt set aside on the ground of errors by the court, and fraud. It appeared that while the court below erred in some of its rulings, the errors did not operate to the damage of the petitioning creditors; also that the evidence offered in proof of the charges of fraud was inadmissible. The petition was dismissed by the district court, and its action was sustained by the circuit court on review. Marionneaux's Case, 1 Woods, 37; 16 Fed. Cas. 754.

The court refused to vacate an adjudication on an application made nearly one year after it had been entered, and decided that the cir-

cumstances of the case, recited in the report, did not excuse the delay. In re Meade, 19 N. B. R. 335; 16 Fed. Cas. 1281.

It will not be presumed in the circuit court, as a ground for reversing the order granting the discharge, that the bankrupt and his wife were not examined, from the fact that the record failed to show it, there having been an order directing such examination. The register's certificate is not necessary to the bankrupt's discharge. Huntington v. Saunders, 64 Fed. Rep. 476.

The general principle is that jurisdictional facts will be presumed in favor of the jurisdiction; and the court refused to entertain an application to annul a discharge on the ground that one of the members of the bankrupt firm did not reside within the district, and the firm did not do business therein. Allen v. Thompson, 10 Fed. Rep. 116.

A creditor who had proved his debt against the bankrupt and received his dividend filed a bill in the circuit court to vacate the discharge on the ground of fraud. It was held that the circuit court had no power to entertain such a bill; that the district court in which the adjudication was had had jurisdiction, and the court considered without deciding whether the circuit court could entertain jurisdiction of such a bill by one who was not a party to the proceedings. Commercial Bank v. Buckner, 20 How. 108.

The court refused to allow a creditor who was contesting the validity of a discharge to amend his petition by adding another specification, the discharge having been granted two years previously. In re Simms, 9 Fed. Rep. 440.

It is not necessary that a creditor should have proved his debt to enable him to proceed for the annulment of a discharge. In re Douglass, 11 Fed. Rep. 403.

In this case a certificate of discharge was vacated for the want of a notice to creditors under section 5109, R. S. Allen v. Thompson, 10 Fed. Rep. 116.

In a proceeding to annul a discharge in bankruptcy (section 5120, R. S.), costs may be awarded to the prevailing party. In re Holgate, 8 Ben. 255; 12 Fed. Cas. 335.

The limitation in the Act of 1867 (section 5120, R. S.), is absolute, and the time begins to run from the date of the discharge, and not from the discovery of the alleged fraud. In re Brown, 19 N. B. R. 312; 4 Fed. Cas. 338.

Under the Act of 1867, it was necessary that a suit to set aside the discharge of a bankrupt should be commenced within two years. Pickett v. McGavick, 14 N. B. R. 236; 19 Fed. Cas. 588.

The period of limitation to a petition to vacate a discharge begins from the date of discharge, and not from the discovery of the fraud on which it is based. Mall & Co. v. Ullrich, 37 Fed. Rep. 653.

In support of a motion to set aside a discharge, it is not competent to prove acts not set forth in the specifications. Tenny et al. v. Collins, 4 N. B. R. 477; 23 Fed. Cas. 848.

A bankrupt had sold his farm to his father-in-law, who deeded it back to the bankrupt's wife for a nominal consideration. The deeds were not recorded. The wife stated to him that both deeds were burned, and he repeated this statement to creditors and procured credit on such representation. Later, the deeds were placed on record. In filing a petition in bankruptcy he omitted the property from his schedules. Upon the facts stated the court held that he had been guilty of concealment and perjury, and the discharge was set aside. In re Rainsford, 5 N. B. R. 381; 20 Fed. Cas. 188.

When a creditor filed specifications in opposition to the discharge of a bankrupt which were decided to be too vague, and he did not seek to amend, and a discharge was granted, and one month later he applied to have it set aside, the court held that he was guilty of laches. In re McIntire, 2 Ben. 345; 16 Fed. Cas. 150.

CO-DEBTORS AND SURETIES.

§ 16. **Co-Debtors of Bankrupts.**— (a.) The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

The acceptance of a composition in bankruptcy proceedings against the principal does not discharge a collateral liability for the same debt. In re Burchell, 4 Fed. Rep. 406.

"Neither the discharge of the bankrupt, nor any step taken by the creditor in the course of the proceedings in bankruptcy in regard to his debt against the bankrupt, can have the effect to release, discharge, or affect any person liable for the same debt for or with the bankrupt either as partner, joint contractor, indorser, surety or otherwise." In re Levy et al., 2 Ben. 169; 15 Fed. Cas. 431.

A debtor, who had been arrested in a civil action, gave a bond with sureties. Thereafter, he received a discharge in bankruptcy. It was held under the Act of 1867 (section 5067, R. S.), that the discharge released the judgment and the obligation of the sureties on the bond, and that the arrest did not afford any lien which was not released by such discharge. Long v. Dickerson, 15 Blatchf. 459; 15 Fed. Cas. 825.

DEBTS NOT AFFECTED.

§ 17. **Debts not Affected by a Discharge.**— (a.) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as

(1.) Are due as a tax levied by the United States, the State, county, district, or municipality in which he resides;

(2.) Are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another;

(3.) Have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or

(4.) Were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

Claims of the United States.

Claims of the United States are not barred by a discharge in bankruptcy, and must be paid in full. In re Huddell et al., 47 Fed. Rep. 206.

Justice Bradley expressed the opinion that the federal government is not bound by a discharge under the Bankrupt Act. U. S. v. The Rob Roy, 1 Woods, 42; 27 Fed. Cas. 873.

Held, under the Act of 1800, that a debt due the United States on a custom-house bond was not barred by a discharge in bankruptcy. U. S. v. King, Wall. Sr. 13; 26 Fed. Cas. 788 (1802).

Held, that the obligation of a surety on the bond of a collector of internal revenue was released by a discharge in bankruptcy. U. S. v. Throckmorton et al., 8 N. B. R. 309; 28 Fed. Cas. 158.

Where the United States proved its debt against a bankrupt and maintained the priority of its claim, it was held that the debt was nevertheless not discharged under the Act of 1867. U. S. v. Herron, 20 Wall. 251.

A discharge under the Bankrupt Act of 1841 was held to cover a debt due the United States on account of customs duties. U. S. v. Zerega, 28 Fed. Cas. 804 (1856).

The surety of a postmaster was held to be entitled to a discharge under the Bankrupt Act of 1841, and may plead his discharge in bar of a suit by the government. U. S. v. Davis, 3 McLean, 483; 25 Fed. Cas. 780 (1844).

[But observe that by the language of the above section, the exception is limited to taxes "levied by the United States," etc.]

Debts Created by Fraud.

The Act of 1867 excepted debts incurred by fraud from a discharge in bankruptcy. Held, that the word means actual fraud and such as involves moral turpitude. Neil v. Clark, 95 U. S. 704; Strang v. Bradner, 114 id. 555.

Construing the word "fraud" as found in section 5117, R. S., the supreme court held that it means an act involving moral turpitude or intentional wrongdoing, and not merely a fraud in law. Noble v. Hammond, 129 U. S. 65.

A discharge in bankruptcy does not release a debt incurred by fraud, notwithstanding it was proved and a dividend paid upon it. Neil v. Clark, 95 U. S. 704; Strang v. Bradner, 114 id. 555.

A debt created by fraud, but reduced to a judgment for money only, is not covered by a discharge in bankruptcy. Warner v. Cronkhite, 6 Biss. 453; 29 Fed. Cas. 243.

A suit by a purchaser of land sold by an assignee of the bankrupt against a grantee under a conveyance that is a fraud on creditors is not barred by a discharge in bankruptcy. Bartles v. Gibson, 17 Fed. Rep. 293.

In deciding whether a debt was contracted by fraud, the district court is not bound by the decision of a state court, but may consider all legal evidence. In re Alsberg, 16 N. B. R. 116; 1 Fed. Cas. 557.

In determining whether a debt is discharged in bankruptcy, a fraud committed by one partner in conducting the business of the firm is chargeable to the firm, though the other members were in fact ignorant of it. Strang v. Bradner, 114 U. S. 555.

Where a person had collected money for another, and involuntary proceedings were commenced against him before he pays it, it was held that the indebtedness was not created by fraud, embezzlement or in a fiduciary capacity within the exception in section 5117, R. S. Noble v. Hammond, 129 U. S. 65.

A plea of discharge in bankruptcy will not be sustained against a bill in equity to rescind a contract on the ground of fraud. Smith v. Babcock et al., 2 Woodb. & M. 246; 22 Fed. Cas. 432.

A bankrupt having bought from his assignee a judgment against another bankrupt who has been discharged, it was held that the purchase carried the assignee's title, and the judgment being based on a fraudulent conversion, the discharge in bankruptcy was no bar to its enforcement and collection in full, although the purchaser was a co-defendant in the judgment. Balliet v. Seeley, 34 Fed. Rep. 300.

A creditor whose claim was created by a fraud, proved it in bankruptcy and received a dividend. It was held that he did not thereby waive his right to bring an action for the balance of the debt. In re Clews, 19 N. B. R. 109; 5 Fed. Cas. 1047.

A judgment had been entered against the bankrupt before the commencement of proceedings, but an appeal from an order of arrest on the ground that the debt was fraudulently created was determined after the filing of the petition, and the order of arrest affirmed. It was held that the debt would not be discharged in bankruptcy, notwithstanding it was in judgment, and that an execution would not be stayed under the Act of 1867 (section 5106, R. S.) In re Pitts, 19 N. B. R. 63; 19 Fed. Cas. 750.

A debt is "created by fraud" within the meaning of the Act of 1867, when the debtor contracted it without intending to pay it in whole or in part. Under the terms of that law the bankrupt is not entitled to a discharge as to such a debt. In re Alsberg, 16 N. B. R. 116; 1 Fed. Cas. 557.

A bankrupt is not released by his discharge from a claim in equity to rescind a contract on the ground of fraud. Doggett v. Emerson, 1 Woodb. & M. 195; 7 Fed. Cas. 821 (1846).

Debts created by fraud are not affected by a discharge in bankruptcy; hence they cannot be used as grounds for opposing a discharge. In re Bashford, 2 N. B. R. 72; 2 Fed. Cas. 1004.

The provisions of a composition will not be enforced by the court of bankruptcy against a creditor who has obtained a judgment by default in a state court upon a debt contracted by fraud, inasmuch as the debt would not be affected by the discharge. In re Tooker, 8 Ben. 390; 24 Fed. Cas. 51.

Fiduciary Debts.

An indebtedness by a bankrupt as guardian, being a fiduciary demand, is not affected by his discharge in bankruptcy. In re Maybin, 15 N. B. R. 468; 16 Fed. Cas. 121.

A discharge in a general form does not affect fiduciary debts, unless they have been proved in the proceedings. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

The obligation of a surety on a guardian's bond is not a fiduciary debt, and is covered by a discharge in bankruptcy. Ex parte Taylor, 1 Hughes, 617; 23 Fed. Cas. 727.

The office of register of the land office was held to be "fiduciary" under the Bankruptcy Act of 1841. Ex parte Wright, 1 West. L. J. 143; 30 Fed. Cas. 655 (1843).

Under the Act of 1800, a bankrupt could be discharged from other debts, notwithstanding the existence of fiduciary debts incurred before the passage of the Act. Chapman v. Forsyth, 2 How. 202.

A pledgee who hypothecates the pledged property to secure a debt due from himself, and fails to return it to the original pledgor, does not thereby create a debt by fraud, or in a fiduciary capacity. Hennequin v. Clews, 111 U. S. 676.

To establish a fiduciary character within the meaning of the Bankrupt Act, there must be something more than circumstances under which a trust or confidence is reposed in the debtor according to the popular acceptance of the term. Upshur v. Brisco, 138 U. S. 365.

The bankrupt had constituted the defendant his attorney to pay the former's wife an annual sum. The defendant accepted the mandate, and became a surety for the payments as provided in the power of attorney. Later, the defendant received his discharge in bankruptcy. Held, that the claim of the wife was not fiduciary, and that the obligation was released by the discharge. Ibid.

A fiduciary creditor who proves his debts and participates in the dividends cannot prosecute any other remedy. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

A fiduciary creditor may at his election prove his claim in bankruptcy and share in the dividends. If he does not elect to do so, his debt is not affected by the discharge. In re Brown, 5 Law Rep. 258; 4 Fed. Cas. 333 (1842).

Where certain produce had been sent to the bankrupt to be sold on commission, and he had sold it, but failed to remit the proceeds, and was

afterward arrested by process from a state court in an action to recover the proceeds, Justice Nelson held that the debt was one created by the defalcation of the bankrupt "while acting in a fiduciary character" under section 33 of the Act of 1867, and that he was, therefore, subject to arrest. In re Kimball, 6 Blatchf. 299; 14 Fed. Cas. 478.

The defendants had received certain United States bonds and had signed an agreement to the following effect: "These bonds were held subject to the order for A. L. P. at ten days' notice, agreeing to collect the coupons for his account free of charge and to allow him two per cent. per annum interest on the par value of said bonds," etc. The defendants sold the bonds and failed to account for the proceeds. The supreme court thought there was no such fraud in the creation of the debt and no such trust in respect to the possession of the bonds as to bar the operation of a discharge in bankruptcy. Palmer v. Hussey, 119 U. S. 96.

A creditor proving a fiduciary debt and receiving a dividend cannot thereafter claim that his debt was not barred by a discharge. Chapman v. Forsyth, 2 How. 202.

A bankrupt owing a fiduciary debt must state its nature in the schedules. If he fails to do so, his discharge will not operate as a bar. Ibid.

Judge Choate, of the district court for the southern district of New York, decided that the case of Neal v. Clark, 95 U. S. 704, settled the proposition that a factor's liability is covered by a discharge in bankruptcy. In re Smith et al., 9 Ben. 494; 22 Fed. Cas. 388.

Section 33 of the Act of 1867 provides that "No debt created by the fraud or embezzlement of the bankrupt * * * or while acting in any fiduciary character shall be discharged by proceedings in bankruptcy." This was held not to cover the case of a commission merchant who received goods on consignment and failed to account for the proceeds to the consignee. Keime v. Graff et al., 17 N. B. R. 319; 14 Fed. Cas. 218.

Held, under the Act of 1841, that the debt of an auctioneer for goods sold by him is of a fiduciary character, and is not released by a discharge in bankruptcy. In re Lord, 5 Law Rep. 258; 15 Fed. Cas. 872 (1842).

The relation between a factor and his principal was held not to be fiduciary within the terms of the Act of 1800. Chapman v. Forsyth, 2 How. 202.

A debt against a commission merchant for the proceeds of goods sold on commission is not fiduciary in its character, so as to be excepted from the benefit of a discharge in bankruptcy. Owsley v. Cobin, 15 N. B. R. 489; 18 Fed. Cas. 929.

A commission merchant who fails, on account of insolvency, to pay for the goods consigned to and sold by him was held to be released of his indebtedness by a discharge in bankruptcy. Zeprink v. Card, 11 Fed. Rep. 295.

Effect of Discharge Generally.

Under the Act of 1800 a discharge in bankruptcy was held not to be a bar to an injury to goods shipped, caused by negligence, where the

damages were not liquidated. Duser v. Murgatroyd, 1 Wash. C. C. 13; 8 Fed. Cas. 140 (1803).

A discharge granted abroad does not release the person or property of the debtor from proceedings commenced here for the collection of debts. Zaregas' Case, 4 Law Rep. 480; 30 Fed. Cas. 916 (1842).

Justice Washington decided that a debt contracted in this country could not be discharged by the bankrupt laws of another country. Green v. Sarminto, Pet. C. C. 74; 10 Fed. Cas. 1117.

A shareholder in a national bank is released from his individual liability to the bank's creditors by his discharge, provided such liability was provable in bankruptcy, and not merely contingent. Irons v. Bank, 27 Fed. Rep. 591.

Under the Act of 1800, a discharge of the party, made after the return of a *scire facias* against his bail, did not operate to discharge the sureties. Bennett et al. v. Alexander, 1 Cranch C. C. 90; 3 Fed. Cas. 203.

A discharge in bankruptcy only releases the debtor personally from his debts. A lien is not discharged, and may be enforced by a state court when the property was not assets in bankruptcy, or by the bankrupt court when it was, and subsequently comes into the possession of the bankrupt. Dixon v. Barnum, 3 Hughes, 207; 7 Fed. Cas. 748.

A replication to a plea of discharge in bankruptcy must set forth that the debt sued for was placed on the schedule. Hood v. Spencer et al., 4 McLean, 168; 12 Fed. Cas. 459.

Held, that a discharge in bankruptcy may be set up in a state court to stay an execution on a judgment recovered against the bankrupt after the commencement of proceedings and before the discharge, notwithstanding the defendant had failed to apply for the stay before judgment. Boynton v. Ball, 121 U. S. 457.

An action was commenced against a special partner on an allegation that he had made himself liable as a general partner. Held, that the action was not barred by the discharge of the general partners in bankruptcy. Abendroth v. Van Dolsen, 131 U. S. 66.

Real estate of the bankrupt set apart as a homestead was held not to be released by a discharge in bankruptcy from the lien of a mortgage executed by him before the commencement of proceedings to secure a debt not proved in bankruptcy. Long v. Bullard, 117 U. S. 617.

A suit had been commenced before the commencement of proceedings in bankruptcy, and was pending when the discharge was granted. Thereafter a judgment was entered. The debt was one provable in bankruptcy. It was held that the discharge was no bar to an action on the judgment. Dimock v. Revere Copper Co., 117 U. S. 559.

A discharge in bankruptcy is personal to the bankrupt, and cannot be pleaded by other persons in bar to an action against them. Moyer v. Dewey, 103 U. S. 301.

A discharge in bankruptcy releases the obligation of the principal on an attachment bond, but not his surety. Wolf v. Stix, 99 U. S. 1.

The Act of 1841 authorized the surety of a promissory note to prove the demand against the maker in bankruptcy. Accordingly the claim of such

a surety against his principal is barred by a discharge. Mace v. Wells, 7 How. 272.

The principal obligor of a delivery bond executed after the commencement of proceedings was not released by a discharge. Wolf v. Stix, 99 U. S. 1.

In Massachusetts the original cause of action is merged in the judgment, and suit on the judgment will be barred by the discharge, although the original cause of action would not have been barred thereby. Packer v. Whittier, 81 Fed. Rep. 335.

An estoppel based on covenants of warranty is not impaired by the discharge of the covenantors in bankruptcy. Bush v. Cooper, 18 How. 82.

Held, that a discharge in bankruptcy releases a debt for a fine imposed in proceedings for contempt and exonerates the bankrupt from imprisonment. Spaulding v. New York, 4 How. 21.

A debt which is excepted from the operation of a discharge can be collected notwithstanding the discharge. The question whether the discharge affects such debt can only arise and be determined between the parties in a suit brought to collect the debt, in which the discharge, after it shall have been granted, shall be set up as a bar to a recovery. In re Wright, 2 Ben. 509; 2 N. B. R. 142; 30 Fed. Cas. 656 (1868).

The contingent liability of the bankrupt as a stockholder in a corporation was held not to be discharged by composition proceedings, when the bankrupt had not included it in his schedule of debts. Flower v. Greenbaum, 2 Fed. Rep. 897.

A discharged bankrupt was sued on a note, and set up in answer his discharge in bankruptcy. The replication alleged that the plaintiff's name was not placed on the schedule, and he had received no notice of the proceedings, or the application for a discharge. A demurrer to the replication was sustained. Lamb v. Brown, 12 N. B. R. 552; 14 Fed. Cas. 988.

The Act of 1841 released the bankrupt from all debts that might have been proved, whether they were actually proved or not. Case of Johnson, 13 Fed. Cas. 718 (1842).

A discharge in bankruptcy releases the bankrupt from a judgment obtained in an action for a tort. In re Book, 3 McLean, 317; 3 Fed. Cas. 867 (1843).

The court decided that a discharge in bankruptcy does not release the bankrupt from an obligation to pay alimony, and discussed without deciding the question whether installments already due are released. In re Garrett, 2 Hughes, 235; 10 Fed. Cas. 47.

Held, under the Act of 1867, that a judgment obtained in an action for breach of promise to marry may be proved in bankruptcy, and is barred by a discharge. In re Sidle, 2 N. B. R. 220; 22 Fed. Cas. 102.

It was held under the laws of Louisiana that the liability of a husband to his wife for her paraphernal property secured by a mortgage on his estate is extinguished by his discharge in bankruptcy; that the mortgage could not attach to land acquired by him after the discharge, and that a subsequent mortgagee of the husband might set up the discharge in bankruptcy against the wife. Fleitas v. Richardson, 147 U. S. 550.

CHAPTER IV.

COURTS AND PROCEDURE THEREIN.

§ 18. **Process, Pleadings, and Adjudications.**— (a.) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in courts of the United States.

(b.) The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow.

(c.) All pleadings setting up matters of fact shall be verified under oath.

(d.) If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this Act, and makes the adjudication or dismiss the petition.

(e.) If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f.) If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

(g.) Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

Pleadings and Amendments — Verification.

The rules of the court in which the proceedings are pending will govern the sufficiency of pleadings. In re Sutherland, Deady, 344; 23 Fed. Cas. 454.

A petition in involuntary bankruptcy was held to be insufficient which alleged that the debtor owed a debt, but failed to allege that it was due to the petitioning creditor. In re Western Savings & T. Co., 4 Saw. 190; 29 Fed. Cas. 775.

The proof on an order to show cause why a debtor should not be adjudged a bankrupt will be confined to the alleged acts of bankruptcy set forth in the petition. In re Sykes, 5 Biss. 113; 23 Fed. Cas. 582.

An allegation in a petition to have a debtor adjudged a bankrupt, signed by one of a firm of creditors "this deponent is informed and believes" (then reciting the act of bankruptcy), is an insufficient averment by the petitioning firm and subject to demurrer. In re Orem et al. v. Harley, 3 N. B. R. 263; 18 Fed. Cas. 799 (1869).

The allegation of acts of bankruptcy, or depositions in support thereof, must be such as constitutes legal testimony, or the court cannot assume jurisdiction. In re Rosenfields, 11 N. B. R. 86; 20 Fed. Cas. 1209.

It is not necessary that the petitioner in a bankruptcy proceeding should have personal knowledge of the acts of bankruptcy alleged in his petition; but the grounds of his belief should be stated. In re Muller et al., Deady, 513; 17 Fed. Cas. 971.

Where neither the petition nor the affidavit to the acts of bankruptcy is signed by the petitioner, the case will be dismissed. Hunt et al. v. Pooke et al., 5 N. B. R. 101; 12 Fed. Cas. 930.

A petition was held to be sufficient under the Act of 1867 which set up that the acts of bankruptcy were committed "within six calendar months next preceding the date thereof." In re Muller et al., Deady, 513; 17 Fed. Cas. 971.

A rule of the court requiring the petitioning creditor to state the consideration for his debt need not be complied with when the debt is in judgment. In re Mott, 17 Fed. Cas. 903.

A petitioner in voluntary bankruptcy was a member of several firms, and failed to state that they were insolvent, or that they had been dissolved. It was held that the omissions were not fatal. In re Dodge, 7 Fed. Cas. 785 (1842).

A court of bankruptcy will allow supplemental proofs to be filed to correct omissions in the petition or depositions. In re Hanibel et al., 15 N. B. R. 233; 11 Fed. Cas. 431.

Allegations of acts of bankruptcy must not be in the alternative. Ibid.

The petitioning creditor was a bank, and the petition was signed by its cashier. The alleged bankrupt moved to vacate the order to show cause on the ground that the signature was not sufficient, and also denied the act of bankruptcy set up in the petition, and demanded a trial. It was

held that in joining issue he waived his objection to the petition. In re McNaughton, 8 N. B. R. 44; 16 Fed. Cas. 333.

Erasures and interlineations that did not affect the sense of the document were held not to be fatal to a petition in bankruptcy. In re Malcolm, 4 Law Rep. 488; 16 Fed. Cas. 540 (1842).

On the hearing, the petitioning creditors will only be allowed to give proof of acts of bankruptcy specifically set forth. Ex parte Potts et al., Crabbe, 469; 19 Fed. Cas. 1199 (1842).

It was not necessary that a petition in involuntary bankruptcy should be signed by the petitioner himself. It may be signed and verified by his attorney duly authorized. So held under the Act of 1867. In re Raynor, 11 Blatchf. 43; 20 Fed. Cas. 338.

Where a petitioner in bankruptcy does not know the residences of creditors, he should set out what efforts he has made to find them. In re Pulver, 1 Ben. 381; 20 Fed. Cas. 54.

Allegations of acts of bankruptcy should be so specific as to inform the creditor fully what he is required to refute and explain. In re Randall et al., Deady, 557; 20 Fed. Cas. 222.

A petition in involuntary bankruptcy is not merely an action to collect a debt. A plea tendering the amount of the debt is immaterial, and is bad. If, as charged, the debtor is insolvent, the petitioner has no right to accept payment, and would thereby take the risk of forfeiting his whole debt. In re Ouimette, 3 N. B. R. 566; 18 Fed. Cas. 913 (1870).

A plea in abatement was held to be not the proper form of opposing a petition in bankruptcy. When one is filed, it should be treated as written objections. In re Book, 3 McLean, 307; 3 Fed. Cas. 1843.

It was not necessary that the answer to a creditor's petition under the Act of 1867 should be verified or that it should be in writing. It is sufficient if the opposing party appears and denies the facts set forth in the petition. At the same time the court expressed the opinion that it is better in all such cases that the answer should not only be in writing, but should be as full, specific, and certain as an answer to a bill in equity. In re Heydett, 8 N. B. R. 332; 12 Fed. Cas. 86.

A demurrer to a petition in bankruptcy having been overruled without prejudice to an application for leave to answer, and the application having been promptly made, the circuit court held that the district court should have permitted the answer to be filed. In re Morse, 17 Blatchf. 72; 17 Fed. Cas. 846.

Where the allegations of a petition in involuntary bankruptcy are denied according to form 61 under the Act of 1867, no replication was held to be necessary. In re Dunham et al., 2 Ben. 488; 8 Fed. Cas. 33.

The answer of a debtor to an involuntary petition under the Act of 1867 was required to be in writing and verified. The averments should be made in substantially the same form as defenses in a common-law action. In re Findlay, 5 Biss. 480; 9 Fed. Cas. 55.

Justice Miller expressed the opinion that a paper simply denying the allegations of acts of bankruptcy, and demanding a trial by jury, is

sufficient without a formal answer to a petition in involuntary bankruptcy. Phelps v. Clasen, Woolw. 204; 19 Fed. Cas. 445.

Where an attorney verifies a petition or proof in bankruptcy, he must show his authority for making such verification. In re Sargent, 13 N. B. R. 144; 21 Fed. Cas. 495 (1875).

Any irregularity in verifying a petition, or the debts of the petitioning creditor, may be amended *nunc pro tunc*, and does not defeat the jurisdiction of the court. In re Donnelly, 5 Fed. Rep. 783.

A petition that is defective in its verification nevertheless gives the court jurisdiction to allow an amendment. In re Simmons, 10 N. B. R. 253; 22 Fed. Cas. 152.

Where there were several petitioners in distinct rights, it was held that a verification by or on behalf of each was necessary. Ibid.

Held, under the Act of 1867, that it is not necessary for an agent who verifies a petition in bankruptcy to state the residence of his principals. Ibid.

The attorney of the bankrupt, as notary public, may take the affidavit of the bankrupt to his petition and schedule. In re Mauer, 5 Saw. 66; 16 Fed. Cas. 1162.

The authority of an agent to verify a petition in bankruptcy must be shown by the agent's own oath, or by supplementary proof, in the discretion of the court. In re Rosenfields, 11 N. B. R. 86; 20 Fed. Cas. 1209.

When a petition in bankruptcy is verified by an attorney, the absence of the principal should appear by direct averment, and not as a recital. In re Hadley, 12 N. B. R. 366; 11 Fed. Cas. 148.

The authority of an agent to verify a petition by a corporation must appear by direct affirmation, and not by way of recital. In re Hanibel et al., 15 N. B. R. 233; 11 Fed. Cas. 431.

A defective verification is deemed waived by the debtor when he calls a meeting for a composition, and it cannot be taken advantage of by objecting creditors. Ex parte Jewett, 2 Low. 393; 13 Fed. Cas. 580.

A petition was amended so as to set up that the conveyances specifically set forth in the original petition, and there alleged to be fraudulent and without consideration, were made with intent to prefer a certain person. It was held that this did not charge a new act of bankruptcy, and should be allowed. In re Henderson, 9 Fed. Rep. 196.

An involuntary petition was filed against two persons as partners, and subsequently amended to include a dormant partner. Held, that the filing of the amended petition was the commencement of the proceedings as to the dormant partner. In re Ward, 12 Fed. Rep. 325.

An affidavit to a petition in bankruptcy, defective in form, may, on motion, be amended to conform to law. In re Sargent, 13 N. B. R. 144; 21 Fed. Cas. 495 (1875).

Creditors having joined in a petition cannot object to amendments which appear necessary to the prosecution of same to effect. Ibid.

Where a petition by one partner against another omitted the residence of the latter, the court allowed the omission to be corrected by amendment. In re Vanderhoef et al., 18 N. B. R. 543; 28 Fed. Cas. 966.

Petitioning creditors are not entitled to amend so as to allege a new act of bankruptcy. Stern v. Schonfield, 22 Fed. Cas. 1310.

Between the filing of the petition and the filing of an amendment, the petitioning creditor had assigned his claim. The amended petition was dismissed. In re Western Savings & T. Co., 4 Saw. 190; 29 Fed. Cas. 775.

When a legal petition in bankruptcy has been filed, amendments subsequently allowed, as a general rule, relate back and take effect from the time that the original petition was filed. Securities transferred by the bankrupt before the amendment is made, but after the filing of the original petition, vest in the assignee, and are recoverable by him, although the adjudication was based exclusively on the facts stated in the amendment. Sherman v. Bank, 8 Biss. 371; 21 Fed. Cas. 1276.

When, after a sufficient petition is filed, an amendatory act is passed making additional or different requirements, the new law applies, but the petitioners will be allowed to amend their pleading so as to conform to it. In re Scull, 7 Ben. 371; 10 N. B. R. 165; 21 Fed. Cas. 890 (1874).

A deposition to acts of bankruptcy cannot be amended, since it is the proof upon which the rule to show cause why the debtor should not be declared a bankrupt issues. May v. Harper et al., 4 N. B. R. 478; 16 Fed. Cas. 1218.

During a trial before a jury on the issue of bankruptcy, the court may allow the petition to be amended. In re Bininger et al., 7 Blatchf. 262; 3 Fed. Cas. 412.

The petition failed to allege that the act complained of was done when the alleged bankrupt was insolvent, but it appeared in evidence during the proceeding that such was the fact. The court allowed the petition to be amended, and proceeded with an adjudication. In re Craft, 2 Ben. 214; 6 Fed. Cas. 698.

The court will permit a petitioning creditor to amend his petition by setting up further acts of bankruptcy that were disclosed in the proof. In re Gallinger, 1 Saw. 224; 9 Fed. Cas. 1108.

After the debtor in involuntary proceedings had appeared, answered, and demanded a jury, and within a few days before the time fixed for the trial, the petitioners asked leave to file an amended petition alleging additional acts of bankruptcy, without notice to the debtor or his attorney. Leave was refused. In re Leonard, 4 N. B. R. 562; 15 Fed. Cas. 331.

The duty of a court of bankruptcy is not limited to the efforts of counsel, but should go beyond them to carry out the policy of the Act and see that justice is done to all parties. For this purpose, amendments may be allowed to the time of the final discharge. In re Pierson, 10 N. B. R. 193; 19 Fed. Cas. 668.

The district court will not allow an amendment setting up entirely new acts of bankruptcy. Reed et al. v. Cowley, 1 N. B. R. 516; 20 Fed. Cas. 433.

Who May Oppose Adjudication.

A general unsecured creditor has a right to appear and oppose an adjudication in bankruptcy. In re Austin et al., 16 N. B. R. 518; 2 Fed. Cas. 23.

Creditors at large having no special interest to protect cannot intervene and oppose an adjudication of bankruptcy; but upon their suggestion the court may order an investigation into suspicious circumstances. In re Hopkins, 18 N. B. R. 490; 12 Fed. Cas. 491.

An attaching creditor can avail himself of any ground of opposition to an adjudication which would be open to the debtor himself. In re Williams, 2 N. B. R. 132; 29 Fed. Cas. 1327.

An attaching creditor has the right to intervene in bankruptcy proceedings and contest the jurisdictional allegation of the petitioner as to the number and amount of petitioners, and also to contest the case on its merits. In re Williams, 14 N. B. R. 132; 29 Fed. Cas. 1327.

Where there is reason to believe that proceedings in voluntary bankruptcy are collusive between the petitioner and the debtor, an attaching creditor may intervene to oppose the adjudication. In re Mendelsohn, 3 Saw. 342; 17 Fed. Cas. 4.

An insurance company was in the hands of a receiver appointed by a state court, when it was adjudged bankrupt. The receiver was held to be competent to move the district court to set aside the proceedings in bankruptcy, but was not allowed to prove that the company was not insolvent. In re Atlantic M. L. I. Co., 9 Ben. 270; 2 Fed. Cas. 168.

A creditor, who had a suit pending when the proceedings were commenced, attached the bankrupt's property and pressed his suit to judgment. Thereafter he asked leave to intervene and oppose the adjudication. The court denied the application on the ground that he had no more rights than a general creditor. In re Vogel et al., 9 Ben. 498; 28 Fed. Cas. 1238.

Creditors can only resist voluntary proceedings on the ground of a want of jurisdiction in the court, or some defect in the proceedings. In re Fowler, 1 Low. 161; 9 Fed. Cas. 614.

In involuntary proceedings under the Act of 1841, the bankrupt did not appear, but certain creditors, alleged to have been fraudulently preferred, appeared and denied that the petitioner had any claims against the alleged bankrupt. It was held that they had a right to contest the facts set up in the petition; also that the alleged bankrupt could be subjected to an examination in relation to the consideration of the debt claimed to be due from him to the petitioning creditor. In re Heusted, 5 Law Rep. 510; 12 Fed. Cas. 71 (1843).

The failure of the alleged bankrupt to appear on the return day does not prevent any creditor directly interested in the proceedings from intervening and contesting the allegations of acts of bankruptcy. In re Jonas, 16 N. B. R. 452; 13 Fed. Cas. 923.

A creditor who has a lien on the property of the bankrupt by virtue of a

judgment, which he was subsequently enjoined from prosecuting by proceedings in bankruptcy, has no right to contest the facts set up by another creditor in a petition filed subsequent to the judgment to have the debtor adjudged a bankrupt. Dutton et al. v. Freeman, 5 Law Rep. 447; 8 Fed. Cas. 175 (1842).

Until an adjudication is had, the petitioning creditor and the debtor are the only parties to a proceeding in bankruptcy. In re Bush, 6 N. B. R. 179; 4 Fed. Cas. 879.

Judge Blatchford decided that the only parties to proceedings in bankruptcy are the bankrupt and his creditors. In re Fredenberg, 2 Ben. 133; 9 Fed. Cas. 740.

A person claiming to be a creditor cannot be heard in opposition to a petition for adjudication, which is simply an issue between the petitioning creditors and the alleged bankrupts. In re Boston H. & E. R. Co., 5 N. B. R. 232; 3 Fed. Cas. 956.

Attaching creditors have no greater right to intervene in bankruptcy proceedings than general creditors. In re Lawrence et al., 10 Ben. 4; 15 Fed. Cas. 21.

An adjudication in bankruptcy may be opposed by an attaching creditor, not a party to the proceedings, on the ground that the required number and amount of creditors had not united in the petition. In re Hatje, 6 Biss. 436; 11 Fed. Cas. 823.

A creditor cannot be heard either in person or by attorney in opposition to proceedings in bankruptcy until he has proved his debt, notwithstanding his claim as set forth in the schedule to the bankrupt's petition. In re Hill, 1 Ben. 321; 12 Fed. Cas. 144.

Construing the Act of 1841, the court said: "The debt due a bank is due to a corporate person absolutely, and can only be represented or claimed by such corporation. There is no authority, express or implied, with the individual stockholders, and no power in them to act with respect to such a debt otherwise than through their corporate representation. Such individuals cannot, accordingly, be allowed to interpose and contest a bankrupt's proceedings because of that corporate debt." In re Tallmadge, 23 Fed. Cas. 677 (1843).

Some time after the adjudication, a brother of the bankrupt filed a petition setting up that the bankrupt died before adjudication, and asking for the dissolution of an injunction that it had been served upon him, the petitioner. The court decided that there is no party to a creditor's petition except the petitioning creditor and the bankrupt; that a person against whom an injunction has been issued might apply to have the injunction dissolved, but did not have a right to contest the adjudication. The petition was dismissed. Karr v. Whittaker et al., 5 N. B. R. 123; 14 Fed. Cas. 133.

Where a creditor had not been served with an order to show cause, his appearance by attorney was held to be sufficient. In re Weyhausen et al., 1 Ben. 397; 29 Fed. Cas. 848.

Practice.

A proceeding in bankruptcy is a civil, and not a criminal proceeding. In re De Forest, 9 N. B. R. 278; 7 Fed. Cas. 363.

The filing of a petition in bankruptcy gives notice to all the world of the commencement of proceedings. In re Lake, 3 Biss. 204; 14 Fed. Cas. 944.

A proceeding in bankruptcy, from the filing of the petition to the discharge of the bankrupt and the final dividend, is a single statutory case or proceeding. York's Case, 1 Abb. (U. S.) 503; 4 N. B. R. 479; 30 Fed. Cas. 814 (1870).

The filing of a petition in bankruptcy under the Act of 1867 (section 5024, R. S.) is deemed to be complete when it is delivered to the clerk of the court, and not when the clerk presents it to the judge. In re Bear et al., 5 Fed. Rep. 53.

The commencement of proceedings in bankruptcy under section 38 of the Act of 1867 was held not to consist in the filing of the petition alone, and must date from the filing of proofs sustaining the petition and making a *prima facie* case. In re Rogers, 10 N. B. R. 444; 20 Fed. Cas. 1105.

The hour marked on the filing of a petition in bankruptcy is not conclusive, and parol testimony may be introduced to show that it was filed at a later hour. In re Roberts et al., 8 Biss. 426; 20 Fed. Cas. 878.

An order to show cause was made on the 15th of September, and it appeared on the face of the papers that the petition was not filed until the 19th. It was ascertained that in fact the petition was filed on the 15th, and the court made an order *nunc pro tunc* correcting the entry of the filing on the petition. It was held that this was proper practice, and that the amended record was conclusive. Ala. & C. R. R. Co. v. Jones, 7 N. B. R. 145; 1 Fed. Cas. 281.

A voluntary petitioner becomes a bankrupt from the time that he files his petition. If he neglects to move for an adjudication, the creditors may do so. Ex parte Harris, 3 N. Y. Leg. Obs. 152; 11 Fed. Cas. 607 (1845).

A creditor who has not appeared on an order to show cause why an adjudication should not be had is not estopped from denying the alleged acts of bankruptcy in subsequent proceedings. In re Thomas, 3 N. B. R. 38; 23 Fed. Cas. 932.

"A tender after suit brought will not bar the petition, unless the debt is the only one outstanding, or unless all other creditors consent, because the respondents are admitted to be insolvent, and the petitioners would have no right, knowing and relying on the insolvency, to accept payment in full without the consent of all." In re Williams et al., 1 Low. 406; 29 Fed. Cas. 1322.

Proceedings in bankruptcy are, as plenary proceedings, equivalent to a general creditors' bill in chancery. The practice, except as otherwise prescribed by statute, should be the same in both. In re Anderson, 23 Fed. Rep. 482.

A proceeding by a creditor to have a debtor adjudged bankrupt is by all analogies a case at law. By it legal rights are to be ascertained and determined, in contradistinction to equitable ones, by the intervention of a jury; the pleadings are in nowise substantially different from those in an ordinary action at law, and the questions arising therein such as usually occur in an action at law. Oregon Bulletin Printing Pub. Co., 8 Chi. Leg. News, 143; 18 Fed. Cas. 780.

Section 41 of the Act of 1867 imposed on the debtor the burden of proof to show that the facts set forth in the petition were not true. In re Price et al., 8 N. B. R. 514; 19 Fed. Cas. 1314.

When the petitioning creditor does not appear on the day fixed for the hearing, and no other creditor asks to be substituted, the proceedings are at an end. In re Camden P. M. Co., 3 N. B. R. 59; 4 Fed. Cas. 1127.

An attorney for a voluntary bankrupt must be a member of the bar of the bankrupt court. The petition will not be dismissed because the attorney is not so qualified, but the fact will be ground for an order that such attorney will not be recognized by the register. In re O'Hallaran, 8 Ben. 128; 18 Fed. Cas. 620 (1875).

A motion once denied, though without prejudice, cannot be heard again on substantially the same facts. In re Mott et al., 17 Fed. Cas. 902.

Previous to the final judgment in bankruptcy proceedings, all orders that affect the merits are under the control of the court. Linder v. Lewis et al., 4 Fed. Rep. 318.

The Bankrupt Act of 1841 was repealed on the 3d of March, 1843. In the case cited, the court held that a petition filed on that day was too late, as the repealing act went into effect from the beginning of the day, unless otherwise provided. In re Welman, 7 Law Rep. 25; 29 Fed. Cas. 681 (1844).

Where a creditor conceals property, the fact cannot be urged in opposition to an adjudication on his own petition. The concealment is itself an act of bankruptcy, and the assignee can recover the property for the creditors. In re Fowler, 1 Low. 161; 9 Fed. Cas. 614.

Where respondents to a rule appeared before the register and defended on the merits, but failed to except to his report upon which the rule was made absolute, it is too late to object to the order as void for want of jurisdiction. In re Carrier, 48 Fed. Rep. 161.

Judge Drummond held that mere irregularities in the proceedings of the court of bankruptcy did not deprive the court of its jurisdiction over the bankrupts and their estate, nor permit creditors to proceed against them in a state court. In re Williams et al., 6 Biss. 233; 29 Fed. Cas. 1318.

When the petitioning creditors fail to appear on the return day, other creditors may intervene and pray an adjudication in bankruptcy. In re Sheffer, 4 Saw. 363; 17 N. B. R. 369; 21 Fed. Cas. 1225.

While a previous petition is pending, a second one, setting forth the same debt and the same creditors, will be stayed. In re Wielarski, 4 Ben. 468; 29 Fed. Cas. 1154.

The creditor, although having the burden, is not required to make full and complete proof of the fact of insolvency, since the debtor best knows

the condition of his affairs. In re Oregon Bulletin Printing & Pub. Co., 13 N. B. R. 506; 18 Fed. Cas. 773 (1876).

Service may be made upon a corporation by delivering a copy of the subpoena to one of its principal officers at its principal place of business. In re California P. R. Co., 3 Saw. 240; 4 Fed. Cas. 1061.

A railroad company was chartered in each of four states. Proceedings in involuntary bankruptcy were commenced in one of them, and an order to show cause was served on the general superintendent in another. Held, that the service was not sufficient, the words "if such debtor cannot be found" meaning "found in the district." The service should have been by publication. Ala. & C. R. R. Co. v. Jones, 5 N. B. R. 97; 1 Fed. Cas. 275.

The court denied an application of an assignee in bankruptcy for an order directing substituted service of a subpoena, holding that the manner of serving a subpoena is governed by the acts of congress and rules of the supreme court; that if the defendants be inhabitants of the district or found therein, the subpoena might be served under rule 13, and that if they were not, there was no power in the court to obtain jurisdiction over their person. Hyslop v. Hoppock et al., 5 Ben. 533; 12 Fed. Cas. 1141.

The affidavit of service of the petition and order to show cause did not state the venue; it was verified before a notary public, and did not show that the petition and order were served on the bankrupt personally. In the same case, no order of publication was made. The court held there was nothing jurisdictional in these irregularities; that the debtor had waived them by applying for a discharge, and that his action was binding on all creditors whose debts were provable. In re Getchell, 8 Ben. 256; 10 Fed. Cas. 268.

The burden of proof to establish acts of bankruptcy is on the petitioning creditor. Brock v. Hoppock, 2 N. B. R. 7; 4 Fed. Cas. 197.

A fraudulent transfer by the petitioner under the Act of 1841, before the passage of the Act, was held not to be a sufficient cause to prevent an adjudication of bankruptcy. In re Houghton, 4 Law Rep. 482; 12 Fed. Cas. 586 (1842).

Under section 16 of the Act of 1867, it was held that when the petitioner became bankrupt after filing a petition of involuntary bankruptcy against another person, his assignee could be substituted. In re Jones, 7 N. B. R. 506; 13 Fed. Cas. 935.

Judge Ballard, of the district court of Kentucky, refused to answer abstract questions addressed to him by the assignee, or questions that had not arisen in the course of proceedings before the register. In re Sturgeon, 1 N. B. R. 498; 23 Fed. Cas. 307.

The court refused to answer questions certified by the register when it did not appear from the certificate that they had arisen in the course of proceedings before him. In re Peck, 3 N. B. R. 757; 19 Fed. Cas. 74.

Where the petition was so delayed that certain transfers which have been attacked could not be attacked after the filing, the delay does not impair or invalidate the proceedings. In re Duncan et al., 8 Ben. 365; 8 Fed. Cas. 1.

A verdict of a jury on the question whether an act of bankruptcy has been committed does not affect the question whether the bankrupt should be discharged, or whether the property, the transfer of which was an alleged act of bankruptcy, should be retained by the transferee. In re Dibblee et al., 3 Ben. 283; 7 Fed. Cas. 651.

On a proper showing, the district court as a court of bankruptcy may open a decree and grant a rehearing on the ground of newly-discovered evidence. Judge Drummond expressed the opinion that the circuit court may peremptorily order the district court to do so. In re Great Western Tel. Co., 5 Biss. 1059; 10 Fed. Cas. 1053.

The only proof in support of an involuntary petition was the statement of the alleged bankrupt that he had sold a stock of goods to his wife for $5,000 and lost the money. The court decided that no act of bankruptcy was proved, for if the statement proved the sale, it also proved the loss of the purchase price. In re Franklin, 8 Ben. 233; 9 Fed. Cas. 709.

On a trial on a petition charging acts of bankruptcy and a denial by the bankrupt, it is not necessary that the petitioning creditor make proof of his debt. Phelps v. Clasen, Woolw. 204; 19 Fed. Cas. 445.

Acts of bankruptcy being in proof, the court will not permit an inquiry to be made into alleged collusion between one of the bankrupts and the petitioning creditors. In re Bininger et al., 7 Blatchf. 262; 3 Fed. Cas. 412.

When the petition for review is not filed at the same term at which the decree is made, it cannot be entertained, the rule requiring bankruptcy proceedings to conform when applicable to equity practice. In re Anderson, 23 Fed. Rep. 482.

An attorney for a corporation may appear and admit acts of bankruptcy without a vote of the stockholders conferring such authority. Leiter et al. v. Rep. Fire Ins. Co., 7 Biss. 26; 15 Fed. Cas. 274.

Justice Daniel decided under the Act of 1841 that a debtor cannot be adjudged a bankrupt when he omits debts from his schedule of liabilities, nor when he had contracted debts in a fiduciary character, notwithstanding he had debts not of such a character. In re Hardison, 4 Law Rep. 255; 11 Fed. Cas. 498 (1842).

A marshal's return to a warrant must show full compliance with the provisions of section 12 of the Act of 1867, and general order number 13. In re Ferris et al., 6 Ben. 473; 8 Fed. Cas. 1164.

Effect of Adjudication.

An adjudication of bankruptcy is not subject to legislative control, and hence is not affected by a subsequent act of congress. In re Raffauf, 6 Biss. 150; 20 Fed. Cas. 165.

A petition in bankruptcy was held to be an action, and an adjudication thereon a final judgment, which even congress cannot annul or set aside. In re Comstock et al., 3 Saw. 128; 6 Fed. Cas. 241.

An adjudication of bankruptcy is a judgment, and cures irregularities that did not go to the jurisdiction of the court. In re Getchell, 8 Ben. 256; 10 Fed. Cas. 268.

An adjudication in bankruptcy is a notice to all the world, being in the nature of a judgment *in rem*. In re Wallace, Deady, 433; 29 Fed. Cas. 65.

An adjudication of bankruptcy against a corporation is in the nature of a decree *in rem*. Lamp Chimney Co. v. Ansonia Brass Co., 91 U. S. 656.

Proceedings in bankruptcy are proceedings *in rem* when they affect only the assets, but as to other property, they bind only those who have notice. In re Judkins, 2 Hughes, 401; 13 Fed. Cas. 1193.

Where the plaintiff and the parties whom he represented formed an integral part of a corporation which had been adjudged to be bankrupt, they are parties to the proceedings in bankruptcy, and cannot attack it in a collateral action. Graham v. Boston H. & E. R. Co., 14 Fed. Rep. 753.

An adjudication of bankruptcy where the court had jurisdiction is conclusive of the facts decreed against persons claiming an adverse interest in the property of the bankrupt. Chapman v. Brewer, 114 U. S. 158.

An adjudication in involuntary proceedings is evidence as to the persons not parties of the commission of the act of bankruptcy, and that there was a debt due the petitioning creditor. Shawhan v. Wherritt, 7 How. 27.

Impeachment of Adjudication.

An adjudication in bankruptcy cannot be impeached collaterally by a party to the proceedings, and shareholders of a corporation are parties to bankruptcy proceedings against it. Graham v. Boston H. & E. R. Co., 118 U. S. 161.

Held, under the Act of 1841, that creditors cannot attack an adjudication of bankruptcy collaterally, but are bound as by a decree *in rem*. Shawhan v. Wherritt, 7 How. 627.

An adjudication in bankruptcy against a corporation is in the nature of a decree *in rem* as respects the status of the corporation, and when the court had jurisdiction, and the adjudication is correct in form, and due notice was given, it cannot be attacked in a collateral proceeding. New Lamp Chimney Co. v. Ansonia B. & C. Co., 91 U. S. 656.

The signing and verification of a voluntary petition by an agent of the debtor is sufficient to sustain the jurisdiction of the court against a collateral attack. Wald v. Wehl, 6 Fed. Rep. 163.

An order of the district court, adjudicating a debtor a bankrupt, made after the return day, and upon a petition of a creditor and after notice to, and appearance by, the debtor, though it may be irregular, is not void, and cannot be collaterally assailed by the assignees under a previous voluntary assignment. Hobson et al. v. Markson et al., 1 Dill. 421; 10 Fed. Cas. 269.

A creditor who had obtained a preference by attachment was heard by the court on a petition to set aside an adjudication in bankruptcy. In re Donnelly, 5 Fed. Rep. 783.

The court annulled an adjudication of bankruptcy in voluntary proceedings where all the claims had been paid by assignment to one creditor, who released the bankrupt. Case of Stern, 22 Fed. Cas. 1309.

Five months after the bankrupt had united with his partners in a voluntary petition, he moved to set aside the adjudication on the ground that he was misled by his partners by fraudulent representations; that the firm was not in fact insolvent, etc. Held, that the motion would not be entertained in view of the fact that the rights of the creditors had become fixed with his acquiescence. In re Court et al., 17 N. B. R. 555; 6 Fed. Cas. 648.

The court ordered the annullment of an adjudication upon the assent of all the known creditors, and after the publication of notice of the application. In re Magee, 16 Fed. Cas. 382.

Where the return of the marshal showed due service, an adjudication in bankruptcy will not be set aside on the motion of a creditor who swears that he did not receive notice of the adjudication. In re Groome, 1 Fed. Rep. 464.

It is not necessary that an attaching creditor should be a party to the proceedings in bankruptcy to authorize him to move to set aside an adjudication. In re Bergeron, 12 N. B. R. 385; 3 Fed. Cas. 266.

Attorneys had appeared for an insolvent insurance company, and consented to an adjudication. Six months later, after several hundred thousand dollars of assets had been collected and were ready for distribution, certain stockholders moved to set aside the proceedings. The court refused on the ground of laches. In re Rep. Ins. Co., 8 N. B. R. 317; 20 Fed. Cas. 552.

Where the debtor confesses the acts of bankruptcy charged in the petition, and a trustee is appointed, a creditor who has proved his debt cannot be heard on a motion to set aside the adjudication. In re Thomas, 11 N. B. R. 330; 23 Fed. Cas. 932.

An application to set aside an adjudication will not be heard without notice to the bankrupt. In re Bush, 6 N. B. R. 179; 4 Fed. Cas. 879.

An adjudication will not be set aside because the debtors solicited creditors to join in the petition. In re Duncan et al., 8 Ben. 365; 8 Fed. Cas. 1.

Dismissal of Proceedings.

When there is but one creditor, the alleged bankrupt is entitled to have bankruptcy proceedings against him dismissed upon payment of the debt In re Sherman, 8 N. B. R. 353; 21 Fed. Cas. 1222 (1873).

All parties whose interests might be affected must consent before a petition in voluntary bankruptcy can be withdrawn; but it seems that the assent of the assignee is not always necessary. In re Gile, 5 Law Rep. 224; 10 Fed. Cas. 369 (1842)

Where the bankrupt had settled all his claims but a few that were contested, it was held that proceedings in bankruptcy might be dismissed upon security being given to creditors who did not consent to the dismissal. In re Great Western Tel. Co., 5 Biss. 1059; 10 Fed. Cas. 1053.

Where a bankrupt has made a settlement and signed a stipulation by which the proceedings were dismissed, the court in bankruptcy will not

set it aside until he has secured relief in a separate suit. In re Bieler, 7 N. B. R. 552; 3 Fed. Cas. 339.

An adjudication may be made on a day subsequent to the time fixed in the order of reference; but if the bankrupt does not appear within a reasonable time, his petition will be dismissed. In re Hatcher, 1 N. B. R. 390; 11 Fed. Cas. 814.

A petition in involuntary bankruptcy will be dismissed where the alleged bankrupt denies that the petitioner is a creditor, and establishes the denial by proof. In re Cornwall, 9 Blatchf. 114; 6 Fed. Cas. 586.

After the filing of a petition, the petitioning creditor commenced a suit at law against the bankrupt and prosecuted it to judgment. Held, that this was not sufficient ground for dismissing the petition in bankruptcy. Van Kleeck et al. v. Thurber, 28 Fed. Cas. 1031 (1842).

TRIAL BY JURY.

§ 19. **Jury Trials.**—(a.) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b.) If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

(c.) The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

Judge Blatchford expressed doubt whether under the Act of 1867 a jury could be demanded on any day but the return day. In re Pupke et al., 1 Ben. 342; 20 Fed. Cas. 59.

Under the Law of 1867 an involuntary bankrupt could not demand a trial by jury if he did not appear on the return day of the rule. In re Gebhardt, 3 N. B. R. 268; 10 Fed. Cas. 141.

Held, under rule 24 in pursuance of the Act of 1867, that it is not too late to ask for a jury trial when specifications in opposition to a discharge are set for hearing. In re Holst, 11 Fed. Rep. 856.

Held, under the Act of 1867 (sections 4980, 4984, R. S.), that a creditor who appealed to the circuit court from an order disallowing a claim had a right to a jury trial. Thistle v. Hamilton, 4 Dill. 162; 23 Fed. Cas. 920.

Under the Act of 1841, it was held that the district court had power to set aside the verdict of a jury which tried an issue under section 4 of that Act, and to order a new trial in accordance with the principles observed by courts of law. Ex parte Corse, 1 N. Y. Leg. Obs. 231; 6 Fed. Cas. 600.

A court of bankruptcy has the same power over verdicts of juries that is exercised by courts of common law, and may in proper cases set them aside and order a new trial. In re De Forest, 9 N. B. R. 278; 7 Fed. Cas. 368.

ADMINISTRATION OF OATHS.

§ 20. **Oaths, Affirmations.**— (a.) Oaths required by this Act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b.) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

Judge Blatchford dismissed a petition under the Act of 1867 that was verified before a notary public. In re Heller et al., 11 Fed. Cas. 1052.

EVIDENCE.

§ 21. **Evidence.**—(a) A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act.

(b.) The right to take depositions in proceedings under this Act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

(c.) Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

(d.) Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e.) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

(f.) A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

(g.) A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

Examination of the Bankrupt.

It is the duty of a creditor who wishes to examine the bankrupt to move in the matter, and the bankrupt has no other duty than to attend on notice. In re Littlefield, 1 Low. 331; 15 Fed. Cas. 624.

The fact that a bankrupt has already answered a question will not excuse him for refusing to answer when asked by another creditor. In re Vogel, 5 N. B. R. 393; 28 Fed. Cas. 1244.

Where the bankrupt had testified that he did not own certain property, it was held that all further questions relating to it were irrelevant. In re Van Tuyl, 1 N. B. R. 636; 28 Fed. Cas. 1088.

The bankrupt may be required to appear for examination on the application of a creditor, notwithstanding a trustee and committee of creditors have been appointed under section 43 of the Act of 1867. In re Cooke et al., 10 N. B. R. 146; 6 Fed. Cas. 418.

A bankrupt was interrogated concerning property of his wife, and his own acts relating thereto. The bankrupt refused to answer on the ground that the transactions occurred prior to the time when the creditor's debt was contracted. The court required him to answer. In re Craig, 3 N. B. R. 100; 6 Fed. Cas. 711.

A creditor has a right to require of the bankrupt a full disclosure under oath of everything relating to his estate, but where there has been one examination, and ample opportunity has been afforded to creditors, an application for further examination will be refused. In re Frisbie, 13 N. B. R. 349; 9 Fed. Cas. 961.

At the first meeting of creditors a debt was proven as secured by certain liens and an assignment, the value and extent of which security was unknown to the creditor so secured. Held, that such creditor was entitled to examine the alleged bankrupt on oath. In re Schwab, 8 Ben. 353; 21 Fed. Cas. 764 (1876).

The pendency of composition proceedings suspended the right of a creditor to examine the bankrupt under the Act of 1867 (section 5086, R. S.). In re Tifft, 18 N. B. R. 177; 23 Fed. Cas. 1212.

It is not competent to examine a bankrupt on the question whether a debt was created by fraud. In re Rosenfield, 1 N. B. R. 575; 20 Fed. Cas. 1202.

A bankrupt cannot be required to give an answer to a question which might render him summarily liable for an offense under the Bankrupt Act of 1867. In re Patterson, 1 N. B. R. 152; 18 Fed. Cas. 1319 (1867).

A bankrupt, on his examination, may decline to answer any question which he cannot answer without incriminating himself. In re Kock, 1 N. B. R. 549; 14 Fed. Cas. 832.

A bankrupt cannot refuse to answer questions put to him on an examination concerning property in which it is alleged that he has an interest. In re Bonesteel, 2 N. B. R. 330; 3 Fed. Cas. 849.

Where the allegations in the creditor's proof are not denied by the bankrupt, creditors will not be allowed to examine the bankrupt to prove the nature of the transaction out of which the indebtedness arose, for the purpose of disclosing facts which would bar a discharge. Such examination is wholly irrelevant. In re Wright, 2 Ben. 509; 2 N. B. R. 142; 30 Fed. Cas. 656 (1868).

A claim of a creditor having been proved was disputed by the bankrupt as invalid for usury. Held, that notwithstanding the objections of the bankrupt and other creditors, the creditor whose claim was disputed had the right to examine the bankrupt before the election of an assignee. In re Winship, 7 Ben. 194; 30 Fed. Cas. 306 (1874).

Creditors who have proved their claims are entitled to an order for an examination of the bankrupt, notwithstanding their claims are contested. In re Belden et al., 4 N. B. R. 194; 3 Fed. Cas. 82.

A bankrupt who left the district after an order for an examination will be denied a discharge until he has submitted to an examination. In re Kingsley, 16 N. B. R. 301; 14 Fed. Cas. 590.

A bankrupt, after examination, has the right to be cross-examined, or further examined in his own behalf, after the creditor or assignee has concluded, so far as may be necessary, to explain or qualify matters previously brought out apparently unfavorable to himself, or matters which are obscure. In re Moles, 2 Low. 352; 18 Fed. Cas. 464.

It was held under section 26 of the Act of 1867, and general order number 10, that a bankrupt could be examined and cross-examined like any other witness. In re Levy et al., 1 Ben. 496; 15 Fed. Cas. 427.

A bankrupt attending as witness at the instance of a creditor was held not to be entitled to fees under the Act of 1867. In re McNair, 3 N. B. R. 219; 16 Fed. Cas. 315.

A bankrupt is not entitled to an allowance of witness fees upon his examination in bankruptcy. In re O'Kell, 2 Ben. 144; 18 Fed. Cas. 632 (1868).

On a hearing in bankruptcy a creditor is only bound to pay the expenses of his own examination. If the bankrupt makes further statements after his examination by the creditor is closed, he becomes his own witness, and must pay the expenses. In re Mealy, 2 N. B. R. 128; 16 Fed. Cas. 1302.

Upon the examination of a bankrupt, his attorney may attend and object to improper questions, but the bankrupt cannot consult with his attorney, unless the register can see cause therefor. In re Tanner, 1 Low. 215; 23 Fed. Cas. 687.

It is not permissible for a bankrupt during his examination to consult with his counsel before answering questions, except by leave of the court or register. In re Collins, 1 N. B. R. 551; 6 Fed. Cas. 116.

The bankrupt, while under examination, should have the privilege of consulting with his counsel in relation to his answers, providing such consultation does not cause delay in the proceedings. In re Patterson, 1 N. B. R. 125; 18 Fed. Cas. 1315 (1867).

Judge Fox, of the district court of Maine, said that while he did not approve of the bankrupt consulting with his counsel on his examination, the question must be determined by the register according to the circumstances of each particular case. In re Lord, 3 N. B. R. 253; 15 Fed. Cas. 872.

It was held to be competent under the Act of 1867, on the examination of the bankrupt, for his own counsel to cross-examine him. In re Leachman, 1 N. B. R. 391; 15 Fed. Cas. 97.

The bankrupt was arrested on process in a civil action, while on his way to the register's office for the purpose of being examined. Judge Blatchford ordered that he be released so as to attend the examination; but decided that as soon as his privilege as a witness should cease, he might be rearrested. In re Kimball, 2 Ben. 38; 14 Fed. Cas. 474.

Under the Act of 1867, an order for the examination of a bankrupt could only be made on a verified petition or affidavit showing good cause for the granting of the order. In re Adams, 2 Ben. 503; 1 Fed. Cas. 78.

It was held unnecessary that an application of an assignee for the examination of the bankrupt should be verified, or that it should specify the reasons for the same, or the matters upon which it was proposed to examine him. In re Lanier, 2 N. B. R. 154; 14 Fed. Cas. 1116.

The fact that one creditor has examined the bankrupt is no reason for withholding the privilege from another creditor. But the bankrupt must

be protected as to such examination from annoyance, oppression, and mere delay. In re Adams, 3 Ben. 7; 1 Fed. Cas. 81.

After the examination of the bankrupt had commenced, he moved to vacate the order because it was not founded on an affidavit. The register denied the motion, and the court sustained his action. In re McBrien, 2 Ben. 513; 15 Fed. Cas. 1218.

On an oral application, the register made an order for the examination of the bankrupt. On objection by the bankrupt Judge Blatchford held that the granting of the order was a matter of discretion, and that the facts did not show that the discretion was abused. In re Solace, 4 Ben. 143; 22 Fed. Cas. 782.

The register made an order for the examination of a bankrupt, reciting that it was made on the application of parties claiming to be interested and who had duly proved their debt. The application was not verified. It was held that the order was properly issued. In re Vetterlein et al., 5 Ben. 7; 28 Fed. Cas. 1170.

An opportunity should be given for a full examination of the bankrupt as to all of his transactions; but it is not good practice to give such an opportunity to each creditor separately. A second examination will not be ordered except for cause shown. In re Gilbert, 1 Low. 340; 10 Fed. Cas. 344.

Examination of the bankrupt had been ordered on the application of a creditor who had proved his claim. The bankrupt refused to be sworn, saying that he had a set-off which extinguished the debt of the creditor. The court held that he must submit to an examination. In re Kingsley, 6 Ben. 300; 14 Fed. Cas. 587.

A bankrupt who had indorsed a note before the commencement of proceedings, and who had thereafter been discharged, was held not to be barred as a witness for the indorsee on the ground of interest. Murray et al. v. Marsh et al., 1 Brun. Col. Cas. 22; 17 Fed. Cas. 1059 (1803).

It was held under the Act of 1867 that a bankrupt, on his examination before a register, could be examined to show that the debt to the creditor making the examination was fraudulently contracted. In re Kock, 1 N. B. R. 549; 14 Fed. Cas. 832.

A bankrupt was asked on examination whether, after filing his petition, he did not make a deposit of some thousands of dollars in money. The court held that the question was proper and relevant, and must be answered. In re McBrien, 3 Ben. 481; 15 Fed. Cas. 1219.

A bankrupt on examination will answer or refuse to answer a question at his own risk. If he refuse, the question should be certified to the court, and thereupon the judge will decide whether the question was a proper one. In re Rosenfield, 1 N. B. R. 319; 20 Fed. Cas. 1205.

A bankrupt was asked: "With what firm, if any, are you at present connected, or are your transactions made by you individually?" The bankrupt having stated that the question had no connection with his business prior to the date of filing his petition, the court sustained his refusal to answer. Ibid.

On the day appointed for the examination of the bankrupt, a creditor failed to appear. Another day was appointed on which the bankrupt failed to appear. Both appeared on a subsequent day, and the examination proceeded. The district court refused to interfere with the examination. In re Robinson et al., 2 N. B. R. 516; 20 Fed. Cas. 982.

Under the Act of 1867 the register could pass upon the admissibility of questions on the examination of a bankrupt, and at the close of the testimony entertain motions to strike out answers or admit questions that he had excluded, and thereupon certify the questions for the decision of the court. In re Lyon, 1 N. B. R. 111; 15 Fed. Cas. 1179.

Under the Act of 1867 it was held that the register had no right to fix an arbitrary limit to the examination of the bankrupt, though he could interpose to prevent vexation and delay. In re Tift, 17 N. B. R. 421; 23 Fed. Cas. 1219.

Under the Act of 1867 the register had no power to fix an arbitrary limit to the examination of a bankrupt in composition proceedings. In re Waltzfelder et al., 8 Ben. 423; 28 Fed. Cas. 1342.

Two years after bankrupt's discharge, the assignee sought to recover assets alleged to have been fraudulently omitted from the bankruptcy schedule. Held, that the assignee was not entitled to examine the bankrupt for the purpose of securing evidence of such assets. In re Witkowski, 10 N. B. R. 209; 30 Fed. Cas. 403 (1874).

Judge Blatchford held that a bankrupt could be subjected to an examination under section 26 of the Act of 1867, more than two years after he had received his discharge. In re Heath et al., 7 N. B. R. 448; 11 Fed. Cas. 975.

When it is desired to examine a bankrupt after his discharge as to property alleged to have been fraudulently transferred, a plenary suit is necessary. In re Dole, 11 Blatchf. 499; 7 Fed. Cas. 828, 832.

After his discharge, a bankrupt cannot be required by summary petition to submit to an examination concerning property alleged to have been fraudulently transferred. Ibid.

The testimony of the bankrupt was held to be inadmissible to prove a claim by his wife, for money alleged to have been loaned to him out of her separate estate. Bechtel's Case, 3 Fed. Cas. 16. To the contrary effect, see In re Bean, 14 N. B. R. 182; 2 Fed. Cas. 1120.

The Wife of the Bankrupt.

The wife of the bankrupt, and all parties to the proceedings, are competent witnesses in bankruptcy. In re Anderson, 23 Fed. Rep. 482.

The wife of a bankrupt must attend and submit to an examination in bankruptcy proceedings the same as any other witness. In re Woolford, 4 Ben. 9; 30 Fed. Cas. 602 (1870).

The district court for the district of Massachusetts held that a creditor who was the wife of a bankrupt was a competent witness in bankruptcy proceedings. In re Richards, 17 N. B. R. 562; 20 Fed. Cas. 692.

It was held under the Act of 1867 that the wife of a bankrupt was not obliged to appear for examination until she was paid her fees as a witness. In re Van Tull, 2 N. B. R. 70; 28 Fed. Cas. 1090.

The wife of a bankrupt cannot be examined concerning the admissions of her husband as to his dealings with third persons; but may be required to testify to transactions to which she was a party or witness. In re Gilbert, 1 Low. 340; 10 Fed. Cas. 344.

When the wife of a bankrupt is obliged to attend and be examined as a witness, she is entitled to *per diem* and mileage. In re Griffen, 2 Ben. 209; 11 Fed. Cas. 4.

When the wife of a bankrupt disobeyed a subpoena to testify, it was held that the proper proceeding was an order to show cause, and that an attachment should not be issued. In re Bellis et al., 3 N. B. R. 270; 3 Fed. Cas. 135.

The wife of a bankrupt, on examination before the register, refused to answer certain questions because the matters concerned her private business. Her refusal was certified to the court, and she was ordered to answer. In re Craig, 4 N. B. R. 50; 6 Fed. Cas. 712.

An order had been made for an examination of the bankrupt's wife, and served on the bankrupt. She failed to attend, and a discharge was refused unless he should prove that he was unable to procure her attendance. In re Van Tuyl, 3 Ben. 237; 28 Fed. Cas. 1088.

The wife of a bankrupt cannot be compelled to testify as a witness against her husband on a motion to set aside the discharge. So held under the Act of 1867. Tenny et al. v. Collins, 4 N. B. R. 477; 23 Fed. Cas. 848.

Other Witnesses.

W. had been enjoined from disposing of any property received from the bankrupts during the four months preceding the adjudication. Thereafter he was summoned as a witness before the register. An objection by the bankrupts to his being examined on the ground that he had been made a party to the proceedings was overruled, as was also a claim made by W. to a right to be attended by counsel on such examination. In re Feinberg et al., 3 Ben. 162; 8 Fed. Cas. 1126.

Referring to the Act of 1867, Judge Lowell said: "As the law stands I think the register must have the power, subject to the reviewing power of the court, to conduct the inquiries (in composition proceedings) and to take down the substance of the answers, and to adjourn the meeting by consent of parties, and even, in some cases, against the wishes of one or the other; but not to conduct a written examination of the length which this appears to threaten, nor to permit all the inquiries and investigation which would be proper in bankruptcy, and in most cases, I think he would be justified in refusing to permit the inquiries to extend beyond the day of the meeting." In re Proby, 17 N. B. R. 175; 20 Fed. Cas. 1.

The register having certified to the court the refusal of a witness to answer certain questions, Judge Cadwalader used this language: "The

register holding provisionally the court of bankruptcy should have declared on the examination before him the opinion which he now certifies, and should have ordered the examinant to answer the questions. If an exception to this ruling of the register had then been taken, which is very improbable, he should have certified it for the summary consideration of the court, the examination proceeding in its other parts. If the witness, or the examinant, without such exceptions refused to answer the question, his contumacy should have been reported." In re Reakirt, 7 N. B. R. 329; 20 Fed. Cas. 368.

The proper practice under section 26 of the Act of 1867 was held to be that the register should pass upon objections to questions and enter exceptions to his ruling. At the close, the questions thus raised should be certified to the judge for his decision, and subsequent proceedings be governed by such decision. In re Levy et al., 1 N. B. R. 105; 15 Fed. Cas. 432.

In the examination of witnesses in proceedings in bankruptcy, the privilege of communications between attorneys and clients must be respected; also that of letters written by one partner to another on the business of the firm. In re Krueger et al., 2 Low. 182; 14 Fed. Cas. 870.

The court will expunge the proof of a claim where the creditor refuses to obey an order for an examination. In re Kyler, 2 Ben. 414; 14 Fed. Cas. 887.

An attorney being examined as a witness cannot add to the oath which he takes a reservation of a right to refuse to answer any question that comes within his privilege. In re Adams, 6 Ben. 56; 1 Fed. Cas. 82. Neither can he refuse to be sworn nor object until some question is asked which invades his privilege. In re Woodward, 4 Ben. 102; 30 Fed. Cas. 541. He cannot be compelled to disclose any information as to the affairs of the bankrupt which he received as his attorney from the bankrupt, or from a person to whom he was referred by the bankrupt for the purpose of obtaining such information. In re Aspinwall, 7 Ben. 433; 2 Fed. Cas. 64.

It may be established by oral testimony that the building in which the bankrupt firm conducted its business was a part of the capital stock contributed to the business of the partnership. In re Farmer et al., 18 N. B. R. 207; 8 Fed. Cas. 1019.

Under the Act of 1867, the register could not require anyone but the debtor to testify at a meeting of creditors held to take action on a proposed composition. In re Dobbins, 18 N. B. R. 268; 7 Fed. Cas. 781.

Held, that the power conferred in section 26 by the Act of 1867, to discover assets by the examination of the bankrupt, ceases with the discharge, but will be revived upon its being set aside. In re Jones, 6 N. B. R. 336; 13 Fed. Cas. 935.

In sustaining the refusal of a witness to answer a question on cross-examination in bankruptcy, Judge Blatchford used this language: "As the question did not relate to any matter of fact in issue, nor to any matter contained in his direct testimony, and as a truthful answer to it

would tend to degrade him, he was not bound to answer it." In re Lewis, 4 Ben. 67; 15 Fed. Cas. 453.

Under the Act of 1867 it was not necessary that notice be given to the bankrupt of the examination of a witness at the instance of the assignee. In re Levy et al., 1 Ben. 454; 15 Fed. Cas. 425.

The attorney for the bankrupt was called as a witness by parties opposing their discharge, but he refused to be sworn. The court ordered that he be sworn and examined. In re Leland et al., 8 Ben. 204; 15 Fed. Cas. 290.

A witness who had purchased claims against the bankrupt swore on examination that he had not obtained the money from the bankrupts or either of them; but refused to answer from whom he had obtained it. The court held that he must answer. In re Lathrop et al., 4 N. B. R. 98; 14 Fed. Cas. 1179.

It is not an absolute right of a witness during his examination in bankruptcy to consult with his counsel; but it may be permitted by the register for good cause. In re Judson, 2 Ben. 210; 14 Fed. Cas. 2.

A witness will be required on a hearing in bankruptcy to answer all proper questions relating to his transactions with the bankrupt prior to the proceedings, and to produce any necessary books of account containing information concerning such dealings. In re Earle, 3 N. B. R. 304; 8 Fed. Cas. 251.

A witness must answer questions concerning his dealings with the bankrupt, notwithstanding his answers might furnish evidence against himself in a civil case. In re Fay, 3 N. B. R. 660; 8 Fed. Cas. 1111.

An attachment was asked for against witnesses for refusing to answer questions on an examination under a commission. The attachment was refused for the reason that no written interrogatories accompanied the commission, and the application did not set forth questions which the witnesses refused to answer. In re Glaser, 2 N. B. R. 398; 10 Fed. Cas. 467.

Two witnesses, on an examination in bankruptcy, were asked if they resided at a certain place, where a gambling house was kept. They refused to answer on the ground that the answer would tend to criminate them, and the court held that they were privileged from answering the question. In re Graham, 8 Ben. 419; 10 Fed. Cas. 913.

An attorney may be required to disclose facts concerning his client's affairs that were not confided to him by his client. In re Donoghue, 2 Hask. 17; 7 Fed. Cas. 899.

A bill in equity asking for a discovery of the particular goods alleged to have been fraudulently transferred by a bankrupt was held bad on demurrer, the court deciding that the complainant could secure the desired information by compelling the preferred creditor to submit to an examination. Garrison v. Markley, 7 N. B. R. 246; 10 Fed. Cas. 53.

An order on a creditor to submit to an examination respecting a claim which he has proved imposes the burden of proof upon him, and in case of his failure to appear, the objections to the claim are to be taken as confessed. In re Lount, 11 N. B. R. 315; 15 Fed. Cas. 988.

An assignee had brought suit against A. for the possession of the bankrupt's books, which he held as receiver of H. under appointment of a state court. While this suit was pending, A. was summoned as a witness before the register, and appeared, but refused to be sworn or to produce the books except upon an order of the court that appointed him. The court ruled that he was not privileged; that he must be sworn and produce the books, but that they should remain in his possession. In re Hulst, 7 Ben. 40; 12 Fed. Cas. 867.

It was held by the United States circuit court for the district of Maine that the creditor of a bankrupt was not a competent witness for the assignee in a suit to increase the assets. Carr v. Hilton, 1 Curt. 390; 5 Fed. Cas. 137 (1853).

A refusal by a judgment creditor to be examined as to the question of usury in the debt upon which his judgment was founded was sustained by the court. McKinsey et al. v. Harding, 4 N. B. R. 38; 16 Fed. Cas. 225.

A witness on an examination in bankruptcy cannot refuse to answer a question unless it would accuse him of something penal or infamous; the fact that it would subject him to a civil injury is not a sufficient excuse. In re Danforth, 6 Fed. Cas. 1150.

In the case of a witness subpoenaed during the hearing on an application for a discharge, the bankrupt is not entitled to notice of such examination, or to cross-examine the witness. In re Duncan et al., 8 Ben. 541; 8 Fed. Cas. 8.

A creditor presenting a claim in bankruptcy subjects himself to the jurisdiction of the court, and upon being examined as to his debt is not entitled to witness fees. In re Paddock, 6 N. B. R. 396; 18 Fed. Cas. 975.

In an examination a witness will be compelled to answer questions respecting his transactions with the bankrupt, and is not entitled to counsel, notwithstanding his answers might establish a liability on his part. Creditors other than the examining creditor cannot interpose objections to questions addressed to such a witness. In re Stuyvesant Bank, 6 Ben. 33; 23 Fed. Cas. 340.

A creditor who institutes an examination could be required to pay or secure the register's fees before the latter proceeds, under the Act of 1867. In re Tifft, 17 N. B. R. 550; 23 Fed. Cas. 1209.

Held, under the Act of 1867, that the register could not, on the application of creditors, order the examination of a trustee appointed in pursuance of section 43. In re Hicks et al., 2 Fed. Rep. 851.

The right to refuse to answer a question on the ground of privilege does not warrant refusal by counsel for a bankrupt to be sworn as a witness. Privilege cannot be interposed until a question is asked which invades the privilege. In re Woodward, 4 Ben. 102; 30 Fed. Cas. 541 (1870).

The provisions of section 876, R. S., as to subpoenas for, and attendance of, witnesses apply in bankruptcy. In re Woodward, 8 Ben. 112; 30 Fed. Cas. 542 (1875).

It was held that each party in bankruptcy proceedings is chargeable with fees for testimony on direct and cross-examination, respectively, taken by such party. Scofield v. Morehead, 2 N. B. R. 1; 21 Fed. Cas. 780 (1868).

Judge Choate used this language: "I see no objection to one creditor's proceeding in an examination commenced by another if that examination is incomplete or leaves matters that may aid the creditors in voting on the composition uninvestigated." In re Vanderhoef et al., 28 Fed. Cas. 966.

Judge Wallace decided under the Act of 1867, that an assignee in bankruptcy may be required to testify in the same manner as any other witness; but that it was the duty of the register to protect him from unnecessary annoyance. In re Smith, 14 N. B. R. 432; 22 Fed. Cas. 403.

A debtor issued a series of bonds with interest coupons payable to bearer, and secured the same by a mortgage of real estate to trustees. Held, that the bonds were negotiable instruments, and that the consideration could not be inquired into upon an examination in bankruptcy. In re Leland et al., 6 Ben. 175; 15 Fed. Cas. 278.

Depositions and Documentary Evidence.

The requirements of depositions to prove claims in bankruptcy are considered in the case cited. In re Port Huron Dock Co.. 14 N. B. R. 243; 19 Fed. Cas. 1080.

The practice in taking depositions before a register in bankruptcy should be conformed to the practice in examinations before an examiner in chancery. In re Levy et al., 1 Ben. 496; 15 Fed. Cas. 427.

Testimony on proceedings in bankruptcy cannot be taken under section 30 of the Act of 1789, or the Act of 1817, or the Act of 1872. In re Dunn et al., 9 N. B. R. 487; 8 Fed. Cas. 96.

In a case in bankruptcy, a commission was issued out of the United States district court for the northern district of New York to take the testimony of a witness in Illinois. The United States circuit court for the latter state held that it could enforce the attendance of the witness before the commission and punish him for contempt in case of refusal to testify. In re Johnston, 14 N. B. R. 567; 13 Fed. Cas. 881.

The bankrupt was a member of a banking firm which belonged to a syndicate. The court ordered an examination into the accounts of all the members to determine what amounts were due to and from the bankrupt's estate. In re Cooke et al., 12 N. B. R. 30; 6 Fed. Cas. 427.

The court refused to allow the withdrawal of the original papers attached to a deposition of the bankrupt. In re McNair, 2 N. B. R. 343; 16 Fed. Cas. 315.

. Judge Nelson, of the district court of Minnesota, expressed the opinion that the general scope of the bankrupt law would give plenary power to the district court to compel the examination of all papers and books of the debtor, or in his possession, if pertinent to the issue. In re Mendenhall, 9 N. B. R. 285; 17 Fed. Cas. 8.

Under the Act of 1867, and the internal revenue laws in force in 1868, it was held that an assignment of property which had no internal revenue stamp could not be used as evidence of alleged acts of bankruptcy. In re Dunham et al., 2 Ben. 488; 8 Fed. Cas. 33.

It was held that a certified copy of an examination of the bankrupt in supplemental proceedings under the laws of the state was admissible in evidence to prove admissions by the bankrupt, under the Act of May 26, 1790. In re Rooney, 6 N. B. R. 163; 20 Fed. Cas. 1153.

In support of an objection that the bankrupt had not kept proper books of account, a judgment-roll was offered in evidence which showed that the bankrupt had made false entries. It was held that the evidence was not competent for that purpose, the judgment having been obtained by default. Metcalf v. Officer et al., 2 Fed. Rep. 640.

To prove an order in a particular proceeding in a bankruptcy case, it is not necessary to produce the whole record of that case, but only the whole record of that particular proceeding. Payson v. Brooke, 19 Fed. Cas. 17.

A copy of any distinct proceeding in bankruptcy may be authenticated as a separate record, and is thereupon admissible as presumptive evidence of the facts stated. Michener v. Payson, 13 N. B. R. 49; 17 Fed. Cas. 259.

The proceedings in bankruptcy are admissible in evidence to show the appointment of the assignee. Babbitt v. Walbrun et al., 1 Dill. 191; 2 Fed. Cas. 283, 285; affirmed by the supreme court in 16 Wall. 577.

In an action by the assignee against the assignor of a promissory note, the former set up to excuse his failure to bring a suit against the maker that such a suit would have been unavailing. Issue was joined on such averment. Held, that the record of an adjudication in bankruptcy against the maker of the note before suit could have been brought was conclusive evidence in support of the averment. Wills et al. v. Claflin et al., 92 U. S. 135.

REFERENCES.

§ 22. **Reference of Cases After Adjudication.**— (a.) After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

(b.) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

JURISDICTION OF ACTIONS AT LAW OR IN EQUITY.

§ 23. **Jurisdiction of United States and State Courts.**— (a.) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b.) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

(c.) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act.

The circuit court of the United States had jurisdiction under the Act of 1841 to set aside a transfer that was void under its provisions, and to distribute the property among parties having valid liens and the general creditors. McLean v. Meline et al., 3 McLean, 199; 16 Fed. Cas. 282 (1843).

Justice Miller held that after the Amendment of 1874, if not before, an assignee in bankruptcy could sue in the circuit courts of the United States to collect debts, without reference to the amount claimed. Payson v. Coffin, 4 Dill. 386; 19 Fed. Cas. 18.

It was held under the Act of 1867 that the United States circuit court, as a court of equity, had full jurisdiction over a bill brought to set aside a transaction charged to be fraudulent under section 35, and to enjoin the parties from prosecuting proceedings in other courts relating to such a transaction. Little v. Alexander, 1 Hughes, 171; 15 Fed. Cas. 601.

Under the Act of 1867, the circuit court, at the suit of the assignee, could issue an injunction against the prosecution of an action of trover in a state court against the marshal for seizing the property of a third person under his warrant in bankruptcy. Hudson v. Schwab et al., 18 N. B. R. 480; 12 Fed. Cas. 814.

The assignee of a bankrupt who is payee of a note may sue in the United States circuit court to collect the same. Pritchard v. Chandler, 2 Curt. 488; 19 Fed. Cas. 1347 (1855).

A question of the validity of a certain lien on bankrupt's property which was claimed to have been acquired by preference came before the court on a petition and answer. The court refused to decide it in

that proceeding and required the petitioner to proceed by a bill in equity or a suit at law. In re Belew, 4 Ben. 135; 2 Fed. Cas. 559.

It was stated by Judge Woodruff that the practice in the New York circuit under the Act of 1867 was to review by petition, but that the circuit court could entertain a plenary suit. Hurst v. Teft, 12 Blatchf. 217; 12 Fed. Cas. 1044.

The circuit court will entertain a bill in equity requiring an assignee in bankruptcy to account and pay dividends when that authority is not conferred by the Act upon the district court. Lucas et al. v. Morris et al., 1 Paine, 396; 15 Fed. Cas. 1063 (1825).

Under section 2 of the Act of 1867, a circuit court in a district other than the one in which the decree of bankruptcy was made, has jurisdiction over a cross-bill filed by an assignee in bankruptcy to assert a right to redeem mortgaged property. Barnard et al. v. Hartford P. F. R. Co. et al., 2 Fed. Cas. 832.

A bankrupt in making his schedules conceals, and, after his discharge, fraudulently conveys his property. A suit by his assignee to set aside such conveyance is not a suit to annul the decree of discharge. Such suit is, therefore, not required to be brought in the district court which rendered the decree. The circuit court is the proper tribunal. Nicholas v. Murray, 5 Saw. 320; 18 Fed. Cas. 174 (1878).

The circuit court for the district of Michigan held that it could entertain a bill by an assignee against several lien holders to ascertain the amounts due, and sell all the property free from incumbrances. Sutherland et al. v. Lake Superior Ship Canal, Railroad & Iron Co. et al., 9 N. B. R. 298; 23 Fed. Cas. 459.

The jurisdiction under the Act of 1867, which the circuit court owed to the fact that the complainant was an assignee in bankruptcy, was not lost because he had parted with all of his title to the property in controversy during the pendency of the suit. Barnard et al. v. Hartford P. F. R. Co. et al., 2 Fed. Cas. 832.

Judge Emmons held that the decision of the supreme court in Marshall v. Knox, 83 U. S. 551, does not deprive the circuit court of its power to order all matters pending in a state court to be adjudicated in an original suit subsequently to be commenced in such court by an assignee in bankruptcy. Sutherland et al. v. Lake Superior Ship Canal, Railroad & Iron Co. et al., 9 N. B. R. 298; 23 Fed. Cas. 459.

The circuit court was held to have no jurisdiction under the Act of 1867 over a bill in equity by the assignee of a bankrupt firm against the assignee of one of the partners to require him to pay the complainant from moneys remaining in his hands after the individual creditors of the partner were satisfied. Stevens v. Appleton et al., 4 Cliff. 265; 23 Fed. Cas. 6.

Held, that the circuit court had jurisdiction of a bill in equity by an assignee in bankruptcy against the bankrupt and another to set aside a conveyance made by the bankrupt to the other defendant and for an accounting and a discovery. Verselius v. Verselius et al., 9 Blatchf. 189; 28 Fed. Cas. 1169.

A suit by an assignee in bankruptcy in the circuit court against the bankrupt's wife and a third party for the recovery of property alleged to have been unlawfully transferred was sustained by the court as to its jurisdiction on the ground that the matter in dispute exceeded $500, and that the suit was between citizens of different states. Spaulding v. McGovern et al., 10 N. B. R. 188; 22 Fed. Cas. 891.

Where an adjudication was had in Kansas, and a resident of Minnesota brought a suit in Indiana without leave of the bankrupt court to foreclose a mortgage given by the bankrupt, making the assignees in bankruptcy parties defendant, and the assignees in bankruptcy brought a suit in the circuit court in the district of Minnesota against the plaintiff in the foreclosure suit asking to have the mortgage declared void, and for an injunction from the further prosecution of the foreclosure suit in Indiana, Judge Dillon held that the circuit court for Minnesota had no bankruptcy jurisdiction, and could only exercise its ordinary equity powers, and accordingly refused to grant the injunction. Markson v. Heaney, 1 Dill. 497; 16 Fed. Cas. 769.

Neither the Judiciary Act of 1789, nor the Bankrupt Law of 1800, nor any other law authorized a circuit court to enjoin proceedings by the bankrupt or his counsel in the district court. Sand's Case, 1 U. S. L. J. 15; 21 Fed. Cas. 333 (1803).

An assignee in bankruptcy can maintain an action for the recovery of assets in a circuit court other than that where the bankruptcy proceedings are pending without regard to citizenship. So held under the Act of 1867. Lathrop v. Drake, 91 U. S. 516. (Clearly not under the present law.)

Under the Act of 1867 the circuit court had original concurrent jurisdiction with the district court to determine the validity of conveyances, and the rights of the parties to a fund received by an assignee in bankruptcy from the sale of incumbered property. Giveen v. Smith et al., 1 Hask. 358; 10 Fed. Cas. 454.

The supreme court held in the case cited that under the Act of 1867 an assignee in bankruptcy could maintain an action in a state court to recover assets of the bankrupt. Clafiin v. Houseman, 93 U. S. 130.

A person claiming an interest in property transferred to the assignee could maintain an action for the recovery of the same in the United States circuit court without respect to diversity of citizenship. Burbank v. Biglowe, 92 U. S. 179. (Otherwise under the present law).

The United States circuit court has no jurisdiction in a suit brought by a purchaser from an assignee in bankruptcy to enjoin the sale of the same property under an order of a state court. Sargent v. Helton, 115 U. S. 348.

An assignee in bankruptcy having in possession property which had been levied upon by virtue of a writ of attachment could maintain a bill in equity in the circuit court to remove the attachment as a cloud upon the title, and the circuit court could restrain the sale of the property by injunction. Chapman v. Brewer, 114 U. S. 158.

Proceedings in bankruptcy were pending against a debtor in the eastern district of New York. The bankrupt applied to the circuit court for the southern district to restrain proceedings under a judgment and execution in a state court. Held, under section 720, R. S., that the circuit court had no jurisdiction to grant the injunction. Tifft v. Ironclad Mfg. Co. et al., 16 Blatchf. 48; 23 Fed. Cas. 1217.

The jurisdiction of the circuit court over a suit in equity brought by the assignee of a bankrupt in one state against citizens of another state, to recover a debt due the bankrupt's estate, was not conferred by the Bankrupt Act of 1867, but by the Judiciary Act of 1789. Gindrat et al. v. Dane et al., 4 Cliff. 260; 10 Fed. Cas. 434.

The circuit court for the district of Missouri affirmed its jurisdiction over a suit brought by an assignee in bankruptcy for that district against a citizen of Pennsylvania, on the ground that the jurisdiction was conferred by the Judiciary Act of 1789. Post v. Rouse, 19 Fed. Cas. 1091.

The circuit court has jurisdiction of all suits brought by an assignee in bankruptcy, or against one. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 253 (1843).

The district court, and not the circuit court, has jurisdiction of a bill filed by creditors before the appointment of an assignee to restrain the holder of a chattel mortgage in possession from disposing of the goods covered by the mortgage. Johnson et al. v. Price, 13 N. B. R. 523; 13 Fed. Cas. 793.

Under the Act of 1867 an assignee in bankruptcy could bring a suit in equity to redeem property from a chattel mortgage in either the circuit or district courts of the United States. Foster et al. v. Ames et al., 1 Low. 313; 9 Fed. Cas. 527.

The circuit court for Pennsylvania decided under the Act of 1867 that it had no jurisdiction of a suit by an assignee in bankruptcy appointed in another district to recover the amount of a preference obtained by a creditor. Lathrop v. Drake et al., 30 Leg. Int. 141; 14 Fed. Cas. 1178. This case was appealed to the supreme court, where the decree of the circuit court was reversed on the proposition above stated. Lathrop v. Drake et al., 91 U. S. 516.

Suits between the assignee and the bankrupt, depending on the status of the latter, are within the exclusive jurisdiction of the district court; but the circuit court had jurisdiction, under the Act of 1867, of an action by the assignee against the bankrupt for property in his possession that he claims as agent for a third person. Carr v. Gale, 2 Ware, 330; 5 Fed. Cas. 118 (1847); affirmed, Carr v. Gale, 3 W. & M. 38; 5 Fed Cas. 123.

The jurisdiction of the circuit and district courts is concurrent as to cases brought by assignees in bankruptcy against parties claiming an adverse interest. Hallack et al. v. Tritch, 17 N. B. R. 293; 11 Fed. Cas. 286.

Circuit and district courts of the United States have full jurisdiction in equity to settle and distribute the estate of the bankrupt. Mitchell v. Great Works M. & M. Co., 2 Story, 648; 17 Fed. Cas. 496 (1843).

The circuit and district courts of the United States have concurrent jurisdiction in the collection and distribution of assets of a bankrupt. So held under the Act of 1841. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 253 (1843).

[See notes to §§ 2 and 11.]

APPEALS AND REVISION.

§ 24. **Jurisdiction of Appellate Courts.**— (a.) The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

(b.) The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

§ 25. **Appeals and Writs of Error.**— (a.) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

(b.) From any final decision of a court of appeals, allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other :

(1.) Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been

taken on appeal or writ of error from the highest court of a state to the Supreme Court of the United States ; or

(ε.) Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

(c.) Trustees shall not be required to give bond when they take appeals or sue out writs of error.

(d.) Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Appellate and Revisory Jurisdiction and Practice.

It was held to be fatal to an appeal under the Act of 1867, that no notice was given to the assignee in bankruptcy, within ten days after the entry of the decree. Wood v. Bailey, 21 Wall. 640.

The time for appeal in bankruptcy cannot be extended after the period for appeal has lapsed. Judson v. Courier Co., 25 Fed. Rep. 705.

The right of appeal conferred by section 8 of the Act of 1867 cannot be enlarged by the court; and where a proper bond is not given, the appeal will not be allowed. Benjamin v. Hart, 4 Ben. 454; 3 Fed. Cas. 189.

It was held under the Act of 1867 that an appellate court obtains jurisdiction by the filing and service of the notice of appeal, and not by the filing of the transcript; also that the time for filing the transcript may be extended by consent beyond the statutory time. Baldwin v. Raplee, 5 N. B. R. 19; 2 Fed. Cas. 526.

The supreme court sustained the action of the circuit court in dismissing an appeal to the latter court which was not entered at a term then in progress, within ten days after it had been taken, from a decision of the district court in bankruptcy. Ex parte Woollen, 104 U. S. 300.

Under the Act of 1867, the circuit court would review an order adjudging the petitioner a bankrupt when all the testimony in the district court on the trial of the issue was preserved by a bill of exceptions; but would not reverse the lower court on a question of fact, unless its decision was manifestly erroneous. In re Pickton, 2 Dill. 548; 19 Fed. Cas. 620.

A failure to file the appeal and statement within ten days, by a creditor appealing from a decision rejecting his claim, was held not to be jurisdictional under the Act of 1867, notwithstanding the provisions of general order number 26. Fellows v. Burnap, 14 Blatchf. 63; 8 Fed. Cas. 1131.

Under the Act of 1867 the petitioning creditor could not appeal to the circuit court from an order of the district court vacating an adjudication made at the instance of another creditor. In re Hall, 1 Dill. 585; 11 Fed. Cas. 199.

The opinion was expressed that an order made by the district court in the exercise of summary jurisdiction should not be reviewed by an appeal under section 8 of the Act of 1867. In re Clark, 9 Blatchf. 372; 5 Fed. Cas. 841.

Where the district court had erroneously ordered a set-off to be allowed, held, under the Act of 1867 (section 4986, R. S.), that the circuit court had jurisdiction to set aside the order. Wilson v. Nat. Bank, 3 Fed. Rep. 391.

In an oral opinion, Justice Miller said that section 8 of the Act of 1867 provided for a writ of error and for two classes of appeals. One class was appeals in equity cases proper, of which the district was given jurisdiction in broad and plain terms by the first and second sections of the Act. The other class related to controversies between creditors and the assignee in relation to the allowance and rejection of claims; the procedure of appeal in this class, when taken by the creditor, being further regulated by section 24. This provision as to appeal is anomalous, since the general legislation by congress distinguishes between writs of error and appeals. Hawkins v. First Nat. Bank, 1 Dill. 453; 11 Fed. Cas. 880.

An appellate court will not review proceedings of assignees and registers unless presented to and passed upon by the district court. Ala. & C. R. R. Co. v. Jones, 7 N. B. R. 145; 1 Fed. Cas. 281.

Only parties to proceedings in bankruptcy can appeal. Ibid.

An objection that the assignee brought a suit without an order from the court of bankruptcy will not be heard for the first time in the appellate court. Hallack et al. v. Tritch, 17 N. B. R. 293; 11 Fed. Cas. 286.

The Act of 1867 (section 4980, R. S.) authorizes an appeal to the circuit court from a decision in a proceeding by the assignee in bankruptcy to expunge the proof of an alleged debt. Morris et al. v. Brush, 2 Woods, 354; 17 Fed. Cas. 810.

It was held to be doubtful under the Act of 1841, whether the granting or refusing to grant a motion for a new trial could be adjourned into the circuit court; but Judge Story held that if it could be all the evidence must be included in the record. In re Marsh, 6 Law Rep. 67; 16 Fed. Cas. 790.

If the debt claimed exceeds $500, the error lies to the circuit court on exceptions taken on a trial in the district court during proceedings for involuntary bankruptcy. So held under section 41 of the Act of 1867. And the circuit court may compel the district court by mandamus to proceed to judgment in such a case. Insurance Co. v. Comstock, 16 Wall. 259.

Under the Act of 1841 it was held that the district judge could not sit in the circuit court on questions adjourned from the district to the

circuit court, and that the questions adjourned could not be taken to the supreme court by certificate of division, nor by appeal or writ of error. Nelson v. Carlan, 1 How. 265.

A bill will not be entertained in the circuit court to reverse an order allowing a claim which has been twice contested before the district court. Bank v. Cooper, 20 Wall. 171.

A petition by an assignee in bankruptcy asking that the validity of certain alleged dealings be determined and that the estate be distributed was held to be a case in equity within the meaning of section 8 of the Act of 1867. It is not a case within the supervisory power of the circuit court, but may be appealed. Stickney v. Wilt, 23 Wall. 150.

Held, that the review of an interlocutory decree of the district court in a suit to set aside a preference should be secured by appeal under section 8 of the Act of 1867, and not under section 2. Warren et al. v. Tenth Nat. Bank et al., 9 Blatchf. 193; 29 Fed. Cas. 286.

Under the Act of 1867 no appeal lies to the circuit court from an adjudication of bankruptcy by the district court. In re O'Brien, 6 Int. Rev. Rec. 182; 18 Fed. Cas. 521 (1873).

All questions of law which arise in the progress of a petition in bankruptcy may be reviewed by the circuit court, but only on writ of error after final judgment. Oregon Bulletin Printing & Pub. Co., 8 Chi. Leg. News, 143; 18 Fed. Cas. 780.

The action terminates when the debtor is adjudged bankrupt. The case in the district court is then at an end, and may be reviewed by the circuit court in the manner prescribed by law, and if tried by a jury can only be reviewed upon a writ of error. Ibid.

Technical objections to pleadings cannot be taken for the first time in the appellate court. Babbitt v. Burgess, 2 Dill. 169; 2 Fed. Cas. 280.

Held, that under section 4986, R. S., no particular form of proceeding was required to take the case to the circuit court for review, and a writ of error will be sufficient to give the circuit court jurisdiction. Cleveland Ins. Co. v. Globe Ins. Co., 98 U. S. 366.

The circuit court will not reverse the judgment of the district court in bankruptcy for irregularities. Its revisory power is limited to what has been determined or done. Huntington v. Saunders, 64 Fed. Rep. 476.

Election or appointment of assignees is subject to the approval of the district judge, and it is not in the contemplation of the Bankrupt Act that these proceedings shall be reviewed in the circuit court. Woods v. Buckewell, 2 Dill. 38; 30 Fed. Cas. 531 (1872).

The statute and the rules prescribing no time within which application for review must be filed, it was held that it must be in a reasonable time. Eleven months held unreasonable, unless excuse made for the delay. In re Beck, 31 Fed. Rep. 554.

Held, under the Act of 1841, that the authority of a district judge to adjourn a question arising in bankruptcy into the circuit court was not barred by the fact that it had given an opinion on such question, when no final order or decree had been entered. In re Hyde, 6 Fed. Rep. 869.

The circuit court refused on a petition of review to consider the postponement by the register of the day for the creditors to show cause why the bankrupt should not be discharged, on the ground that it was a question of practice to be determined by the district court. In re Robinson, 6 Blatchf. 253; 20 Fed. Cas. 978.

A circuit judge, who had proved his claim and thereafter sold it and received the consideration, was held not to be disqualified from deciding a petition for the review of an order by the district court on the allowance of a claim. In re Sime et al., 2 Saw. 320; 22 Fed. Cas. 145.

The assignee, alleging that the bankrupt withheld certain money, asked for an order that he pay it over. The bankrupt swore that the money had already been expended before the adjudication, and the prayer of the assignee was thereupon denied. On review, the circuit court said that it would require a very clear case to justify the reviewing court to set aside the decision of the district court on a question of fact. In re Mooney et al., 14 Blatchf. 204; 17 Fed. Cas. 659.

The circuit court, in reviewing proceedings in the district court on a writ of error, will accept the findings of fact made by a referee as conclusive, and only review conclusions of law embraced in exceptions filed in the lower court. Sicard v. Buffalo, N. Y. & P. R. Co., 15 Blatchf. 525; 22 Fed. Cas. 64.

Under the Act of 1867, it was held in the sixth circuit that upon a demurrer to a petition for review, the petition will be taken as true, and the appeal determined accordingly. Curran et al. v. Munger et al., 6 N. B. R. 33; 6 Fed. Cas. 982.

Five months after the discharge of the bankrupt, a creditor whose claim amounted to 2 per cent. of the aggregate indebtedness of the bankrupt filed a petition for review. In the meantime, the bankrupt had engaged in new business. It was held that the delay was unreasonable, and the petition for review was dismissed. In re Murray et al., 14 Blatchf. 43; 17 Fed. Cas. 1040.

A petition for revision should set forth specifically the alleged error or errors of the court below that the petitioner relies upon. Littlefield v. Del. & H. Canal Co., 3 Biss. 371; 15 Fed. Cas. 621.

The power of the circuit court over proceedings of the district court in bankruptcy, under the Act of 1867, was supervisory, and it would not hear additional testimony on a petition for review. In re Great Western Tel. Co., 5 Biss. 1059; 10 Fed. Cas. 1053.

The supervisory jurisdiction conferred by the Act of 1867 on circuit courts is restricted to the court for the district where the proceedings in bankruptcy are pending. Jobbins v. Montague et al., 6 N. B. R. 509; 13 Fed. Cas. 648.

A bill of review can only be sustained on the ground of errors that appeared on the record which, in proceedings in bankruptcy, does not include the evidence. Barker v. Barker's Assignee, 2 Woods, 241; 2 Fed. Cas. 809.

The superintendence given to the circuit court in section 2 of the Act of 1867 is revisory in its nature, and there was no intention to give to parties authority to apply to that tribunal for original orders in the nature of a specific execution of the decrees of a district court. In re Bininger et al., 7 Blatchf. 165; 3 Fed. Cas. 410.

Where it was desired, under the Act of 1867, to secure the opinion of the circuit court on a question arising in the course of proceedings in bankruptcy, the proper practice was by a petition for a review, and not by an appeal. In re Reed, 2 N. B. R. 9; 20 Fed. Cas. 417.

It was held, under the Act of 1867, that section 2 conferred on the circuit court complete control over proceedings, and any separate branch of it, or any particular question arising, and that it might exercise this jurisdiction by bill, petition, writ of error, writ of certiorari or other appropriate process, though a proceeding by petition was held to be preferred. Ruddick v. Billings, Woolw. 330; 20 Fed. Cas. 1306.

An objection to a composition will not be considered on review in the circuit court, unless made in the district court. In re Wilson, 16 Blatchf. 112; 30 Fed. Cas. 93 (1879).

The circuit court will not on review interfere with a decree of the district court, in composition proceedings, in the matter of the percentage accepted by the creditors. In re Joseph, 24 Fed. Rep. 137.

The court refused to decide abstract questions certified at the instance of a person who was not a party to the proceedings. In re Haskell, 4 N. B. R. 558; 11 Fed. Cas. 770.

Where an assignee or a creditor is driven to a bill in equity or an action at law, the circuit court has no supervisory jurisdiction, nor has it such jurisdiction in the matter of the rejection or allowance of claims in bankruptcy. Such cases can only be taken up on writ of error or appeal. York's Case, 1 Abb. (U. S.) 503; 4 N. B. R. 479; 30 Fed. Cas. 814 (1870).

Construing the Act of 1867 (section 4984, R. S.), Judge Dillon held that where a creditor appeals from the decision of the district court disallowing a part of his claim, he must file a declaration at law, and the issues must then be joined, and the case tried, in the same way as a case at law originally commenced in the circuit court. Stillwell v. Walker, 17 N. B. R. 569; 23 Fed. Cas. 93.

Where an involuntary bankrupt filed a petition in the district court for a review of the record, it was decided to be a part of the original proceedings, and not a bill to impeach the adjudication for fraud. Also that it could not be taken to the circuit court by appeal, but only under the supervisory power conferred by section 2 of the Act of 1867. Sandusky v. National Bank, 23 Wall. 289.

The circuit court would not entertain an appeal under the second section of the Act of 1867 from an interlocutory decree made by the district court in a suit in equity by an assignee in bankruptcy against a person claiming an adverse interest. Clark v. Iselin, 9 Blatchf. 196; 5 Fed. Cas. 880.

It was held that a petition for a review under section 2 of the Act of 1867 must set forth distinctly the ruling of the district court that is sought to be reviewed. In re Sutherland, 2 Biss. 405; 23 Fed. Cas. 452.

Held, under the Act of 1867, that any creditor having a lien upon the bankrupt's property could invoke the supervisory jurisdiction of the court for a review of any decree affecting his rights. In re Taliafero, 3 Hughes, 422; 23 Fed. Cas. 674.

Held, under the Act of 1867, section 2, that an adjudication of bankruptcy may be reviewed by the circuit court or judge at any place within the circuit, either within or without the district where the proceedings in bankruptcy are pending. Thornhill et al. v. Bank of Louisiana, 3 N. B. R. 435; 23 Fed. Cas. 1135; s. c., 1 Woods, 1; 23 Fed. Cas. 1139.

In a suit brought by an assignee in bankruptcy to recover property alleged to have been unlawfully transferred, the referee reported certain findings. No exception was made to the report. The defendant sued out a writ of error from the circuit court, but the case contained exceptions which embraced only proceedings prior to the report of the referee. Held, that the referee's findings of fact could not be reviewed. Tyler v. Angevine, 15 Blatchf. 536; 24 Fed. Cas. 458.

Held, under the Act of 1867, that the circuit court could review a resolution by the creditors of a bankrupt accepting a certain percentage of their claims, but the supervisory power of the court would only be exercised as to assignments of error set forth in the petition. In re South Boston Iron Co., 4 Cliff. 343; 22 Fed. Cas. 812.

Held, under the Act of 1841, that the circuit courts of the United States could upon a sufficient showing grant new trials in criminal cases arising under the Bankrupt Act. U. S. v. Conner, 3 McLean, 573; 25 Fed. Cas. 595.

The circuit court refused, under section 2 of the Act of 1867, to entertain a petition to review the decision of the district court allowing a claim on the ground that the Act contained other provisions for the review of such orders. In re Troy Woolen Co., 9 Blatchf. 191; 24 Fed. Cas. 244.

Appeals to the Supreme Court.

Where the circuit court has affirmed a decree of discharge, an appeal will not lie to the supreme court, notwithstanding the debt of the opposing creditor exceeds $2,000. Colt v. Robinson, 19 Wall. 274.

The supreme court refused to review orders determining the priority of certain claims to the bankrupt's estate that were first heard before the register, and then taken to the district court, and thence by appeal to the circuit court. Hall v. Allen, 12 Wall. 452.

Under the Act of 1867 the supreme court had no jurisdiction by appeal or writ of error over a decision of the circuit court in the exercise of its supervisory jurisdiction. Sandusky v. National Bank, 23 Wall. 289.

Under the Act of 1867 the supreme court refused to review the action of the circuit court in the exercise of its supervisory jurisdiction over an adjudication in bankruptcy. Cleveland Ins. Co. v. Globe Ins. Co., 98 U. S. 366.

A judgment by the circuit court on an appeal from an order of the district court in bankruptcy rejecting claims offered by an alleged creditor is not reviewable in the supreme court. Wiswall v. Campbell, 93 U. S. 347; Leggett v. Allen, 104 id. 741.

In the cases cited it was decided that an appeal does not lie to the supreme court from a decree of the circuit court exercising its supervisory jurisdiction under section 2 of the Act of 1867. Hall v. Allen, 12 Wall. 452; Morgan v. Thornhill, 11 id. 65; Mead v. Thompson, 15 id. 635; Sandusky v. Nat. Bank, 23 id. 289; Connell v. Crane, 94 U. S. 441; Hill v. Thompson, id. 322; Minick v. Coleman, 95 id. 266; Milner v. Meek, id. 252.

The supreme court entertained an appeal from the supreme court of the District of Columbia from a proceeding disposing of a claim under section 1 of the Act of 1867. Smith v. Mason, 14 Wall. 419.

The supreme court has jurisdiction of an appeal from a decree of the circuit court on a bill in equity filed in the district court by assignees against creditors of the bankrupt for the sale of his lands. Morgan v. Thornhill, 11 Wall. 65.

The supreme court held that it has no power of revision over the decrees of the district courts as courts of bankruptcy. Ex parte Christy, 3 How. 292.

Where the highest court of a state has rendered the decision upon a proceeding for perpetual injunction against the collection of a judgment obtained in a court of the state on the ground of the discharge of the judgment debtor in bankruptcy, a federal question is raised which is subject to review by the supreme court of the United States. Palmer v. Hussey, 119 U. S. 96.

In the case cited, the supreme court entertained jurisdiction of an appeal from a decision by the highest court of the state on a motion to enjoin the collection of a judgment of a state court on account of the discharge of the defendants in bankruptcy, holding that it raised a federal question. Ibid.

Justice Davis held under the Law of 1867 that an order made by the circuit court in the exercise of its supervisory jurisdiction of bankrupt proceedings may be reviewed on appeal by the supreme court. In re Fox et al., 8 Chi. Leg. News, 313; 9 Fed. Cas. 623. On appeal to the supreme court of the United States, this decision was reversed, and the appeal was dismissed. Conro v. Crane, 94 U. S. 441.

ARBITRATION.

§ 26. **Arbitration of Controversies.**— (a.) The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b.) Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

(c.) The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

It was decided under the Act of 1867, that after the commencement of proceedings, a creditor and the bankrupt could not submit to arbitration the question what amount was due to the creditor. In re Ford et al., 18 N. B. R. 426; 9 Fed. Cas. 425.

COMPROMISES.

§ 27. **Compromises.**— (a.) The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

An order of the bankrupt court approving a compromise by assignee, entered on *ex parte* application of the assignee, does not bind the other party. Section 5074, R. S. Duff v. Hopkins, 39 Fed. Rep. 599.

An assignee in bankruptcy may compromise a claim that depends upon the uncertainties of litigation; but only upon receiving a *pro rata* share. In re Furbish, 2 Hask. 120; 9 Fed. Cas. 1007.

The district court vacated an order authorizing the surrender of certain life insurance policies to a creditor to whom they had been pledged in satisfaction of a secured debt upon a showing that the order had been procured by misrepresentation of material facts. In re Hoole, 3 Fed. Rep. 496.

In the case cited the court considered and construed the general orders under the Act of 1867 relating to compromises. Ibid.

The circuit court decided under the Act of 1867 that the district court could not authorize the assignee to compound all doubtful claims with the consent and approbation of a committee of creditors. In re Dibblee, 3 Ben. 354; 7 Fed. Cas. 657.

PUBLICATION OF NOTICES.

§ 28. **Designation of Newspapers.**—(a.) Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this Act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

OFFENSES.

§ 29. **Offenses.**— (a.) A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

(b.) A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

(c.) A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

(d.) A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

The sufficiency of an indictment under section 44 of the Act of 1867 is considered in the case cited. U. S. v. Crane, 3 Cliff. 211; 25 Fed. Cas. 689.

It was held not to be necessary that an indictment for perjury by a petitioner in bankruptcy should set out the petition at length. U. S. v. Deming, 4 McLean, 3; 25 Fed. Cas. 816 (1845).

Held, that a prosecution under subdivision 6 of section 5132, R. S. (Bankrupt Act of 1867), could be based on an information, the crime not

being infamous within the meaning of the fifth amendment to the Constitution. U. S. v. Block, 4 Saw. 211; 24 Fed. Cas. 1174.

An indictment under section 44 of the Act of 1867 was held to be insufficient where it did not name the court, or the time, or the place where the proceedings in bankruptcy were instituted. U. S. v. Latorre, 8 Blatchf. 134; 26 Fed. Cas. 872.

It was held that, after the amendment of 1874, a court had jurisdiction to try an indictment under section 5132, R. S. (Act of 1867), before an adjudication was had. It was not necessary that an indictment under section 5132, R. S., should charge an intent to defraud creditors generally, or contain a negative averment to the effect that the defendant was not "carrying on business and dealing in the ordinary course of trade." U. S. v. Myers, 16 N. B. R. 387; 27 Fed. Cas. 49.

Referring to an indictment under section 44 of the Act of 1867, Judge Miller said that all matters necessary to constitute the offense must be pleaded. "It is not sufficient to aver that proceedings in bankruptcy were duly commenced. It must be pleaded and proven that the petition in bankruptcy was presented to the district court by a certain creditor, naming him, and allege the amount of such petitioning creditor's claim, and the alleged cause of bankruptcy, and the adjudication of bankruptcy. It must appear affirmatively that the creditor had a right under the law to prosecute proceedings in bankruptcy. The amount of his debt must appear, otherwise the court would have no jurisdiction. * * * The description of the goods should be as definite as in a declaration in trover. The word 'feloniously' should be omitted." U. S. v. Prescott, 2 Biss. 325; 27 Fed. Cas. 614.

The execution of a chattel mortgage by a debtor was held to be a disposition of the property out of the usual course of business under the criminal provisions of the Act of 1867. U. S. v. Block, 4 Saw. 211; 24 Fed. Cas. 1174.

A retail dealer who bought a large quantity of goods ostensibly to replenish his stock, but sold them at wholesale at a sacrifice, was held to be guilty under section 44 of the Act of 1867. U. S. v. Frank, 2 Biss. 263; 25 Fed. Cas. 1205.

On the facts of the case, the defendant was held to answer under section 44 of the Act of 1867. U. S. v. Geary, 4 N. B. R. 534; 25 Fed. Cas. 1272.

Under sections 1 and 7 of the Act of 1841 an intentional omission of a part of the bankrupt's property in a verified schedule was held to be perjury. U. S. v. Nichols, 4 McLean, 23; 27 Fed. Cas. 151 (1845).

Persons other than the bankrupt may conspire with the latter so as to constitute an offense under the Act of 1867 (sections 5134, 5440, R. S.). U. S. v. Bayer et al., 4 Dill. 407; 24 Fed. Cas. 1046.

Judge Dillon expressed the opinion that under the Act of 1867 (section 5132, R. S.), a person who procures the bankrupt to commit the acts therein made criminal, is subject to indictment. Ibid.

The bankrupt could be convicted of concealing assets from the assignee under the Act of 1867 without proof of a demand by the assignee. U. S. v. Smith, 13 N. B. R. 61; 27 Fed. Cas. 1170.

The defendants were charged with a conspiracy to have a bankrupt falsely pretend that the proceeds of a mortgage which he had given had been stolen. The fact was held to constitute an offense under the Act of 1867 (section 5440, R. S.). U. S. v. Swett et al., 2 Hask. 310; 28 Fed. Cas. 3.

The character of proof in criminal cases under the Act of 1867 is discussed in the case cited. U. S. v. Penn, 13 N. B. R. 464; 27 Fed. Cas. 490.

The repeal of the bankrupt law of 1800 was held by Justice Washington to be a bar to a prosecution under that law. U. S. v. Passmore, 4 Dall. 372; 27 Fed. Cas. 458 (1804).

Evidence given by a bankrupt on a compulsory examination cannot be used against him on a criminal proceeding. U. S. v. Prescott, 2 Dill. 405; 27 Fed. Cas. 616.

The court upheld the constitutionality of the clause of section 44 of the Act of 1867 which punishes by imprisonment a fraudulent disposition of goods obtained on credit and remaining unpaid for within three months preceding the commencement of proceedings in bankruptcy. U. S. v. Tusey, 6 N. B. R. 284; 27 Fed. Cas. 631.

In the case cited, subdivision 9 of section 5132, R. S., was held to be unconstitutional, the court holding that "an act committed within a state, whether for a good or bad purpose, or whether with an honest or criminal intent, cannot be made an offense against the United States unless it have some relation to the execution of a power of congress, or to some matter within the jurisdiction of the United States." U. S. v. Fox, 95 U. S. 670.

RULES OF PROCEDURE.

§ 30. **Rules, Forms, and Orders.**— (a.) All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

Judge Hopkins held that the forms prescribed in the general rules adopted by the supreme court under the Act of 1867 were not mandatory, but might be adapted to the circumstances of each case. In re Strachan, 3 Biss. 181; 23 Fed. Cas. 212.

Certain rules and forms under the Act of 1867, considered. In re Bellamy, 1 Ben. 390; 3 Fed. Cas. 121; 1 Ben. 426; 3 Fed. Cas. 124; 1 Ben. 474; 3 Fed. Cas. 126.

It was held that the Act of 1867 conferred no power on the United States district court to make general rules governing proceedings in bankruptcy. In re Kennedy et al., 7 N. B. R. 337; 14 Fed. Cas. 308.

COMPUTATION OF TIME.

§ 31. **Computation of Time.**— (a.) Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or legal holiday.

The last day for a bankrupt to apply for his discharge under the Act of 1867 fell on Thanksgiving. It was held that he might apply on the following day. In re Lang, 2 N. B. R. 480; 14 Fed. Cas. 1097.

The court refused to set aside the proceedings of a meeting of creditors because it was held on Thanksgiving day. In re McGlyn, 2 Low. 127; 16 Fed. Cas. 122.

TRANSFER OF CASES.

§ 32. **Transfer of Cases.**— (a.) In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

CHAPTER V.

OFFICERS, THEIR DUTIES AND COMPENSATION.

REFEREES — APPOINTMENT AND QUALIFICATION.

§ 33. **Creation of Two Offices.**— (a.) The offices of referee and trustee are hereby created.

§ 34. **Appointment, Removal, and Districts of Referees.**— (a.) Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1.) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2.) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

§ 35. **Qualifications of Referees.**— (a.) Individuals shall not be eligible to appointment as referees unless they are respectively (1.) competent to perform the duties of that office; (2.) not holding any office of profit or emolument under the laws of the United States or of any state other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3.) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4.) residents of, or have their offices in, the territorial districts for which they are to be appointed.

§ 36. **Oaths of Office of Referees.**— (a.) Referees shall take the same oath of office as that prescribed for judges of United States courts.

§ 37. **Number of Referees.**— (a.) Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

JURISDICTION.

§ 38. **Jurisdiction of Referees.**— (a.) Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to

(1.) Consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions;

(2.) Exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment;

(3.) Exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act;

(4.) Perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and

(5.) Upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

In the absence of objections by the creditors, the register had power under the Act of 1867 to order a sale of the debts and choses in an action belonging to the estate. In re Bank of North Carolina, 19 N. B. R. 164; 2 Fed. Cas. 668.

A register in bankruptcy was held under the Law of 1867 to have power to direct the assignee to pay court fees to officers of the court out of funds in his hands. In re Lane, 3 Ben. 98; 14 Fed. Cas. 1069.

The register has not the power to decide on the validity of objections to questions in the examination of a bankrupt or on the admissibility of testimony. In re Patterson, 1 N. B. R. 147; 18 Fed. Cas. 1321 (1867).

The register can, of his own motion, order the bankrupt to amend his schedules to conform to the facts, or when they appear insufficient or irregular. But the order of the register should specify in what respect the schedules are defective. In re Orne, 1 N. B. R. 79; 18 Fed. Cas. 823 (1867).

Under the Act of 1867 the register had no authority to exclude a question addressed to a witness which was challenged for want of competency, materiality or relevancy. In re Rosenfield, 1 N. B. R. 319; 20 Fed. Cas. 1205.

It was held under the Act of 1867 that a register had power to adjourn a meeting of creditors when, in his opinion, the interest of the creditors, as a whole, required it. In re Cheney, 19 N. B. R. 16; 5 Fed. Cas. 541.

Under the Act of 1867 the register in bankruptcy was required to take possession of the bankrupt's property, and keep it until it was turned over to the assignee on his appointment. In re Hasbrouck, 1 Ben. 402; 11 Fed. Cas. 767.

A register has no power to order the bankrupt to execute deeds releasing an interest held at the time of filing his petition. In re A. B., 3 N. B. R. 244; 1 Fed. Cas. 3.

Judge Blatchford construed rule 37 under the Act of 1867 to mean that a register could not order the proof of a debt to be expunged or reduced if the debtor objected, but that he must certify the question to the court. In re Muldaur et al., 8 Ben. 127; 17 Fed. Cas. 959.

Under section 26 of the Act of 1867, the register could make an order for the examination of the bankrupt or a witness without applying to the court, and such examination was conducted substantially as in supplementary proceedings under the laws of the state. In re Pioneer Paper Co., 7 N. B. R. 250; 19 Fed. Cas. 715.

Questions to be decided by the district court must arise regularly in the course of proceedings before the register, and between parties who have a legal right to raise them, unless there is a suggestion that the proper party is acting in bad faith in refusing to raise such question or other similar suggestion. In re Wright, 1 N. B. R. 393; 30 Fed. Cas. 662 (1873).

Certain creditors appeared before the register and filed objections to proceedings in bankruptcy on the ground, among others, that the bankrupt had omitted from his schedule property held by him or others for his use. The court held that this was not such an "opposition to the discharge" as required the register to refer the matter to the court. In re Hill, 1 Ben. 321; 12 Fed. Cas. 144.

It was held under the circumstances of the case that the register might appoint a watchman to take charge of the property of the bankrupt. In re Bogert, 2 N. B. R. 585; 3 Fed. Cas. 803.

Where a trustee had been appointed by the creditors under section 43 of the Act of 1867, it was held that the register had no power on the mere application of creditors to issue a summons for his examination or for the production of his books and papers. In re Hicks, 2 Fed. Cas. 851.

[See notes to § 21 as to authority of referees in the examination of witnesses.]

DUTIES.

§ 39. **Duties of Referees.**— (a.) Referees shall

(1.) Declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable;

(2.) Examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be mended;

(3.) Furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest;

(4.) Give notices to creditors as herein provided;

(5.) Make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges;

(6.) Prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so;

(7.) Safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded;

(8.) Transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail;

(9.) Upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and

(10.) Whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

(b.) Referees shall not

(1.) Act in cases in which they are directly or indirectly interested;

(2.) Practice as attorneys and counselors at law in any bankruptcy proceedings; or

(3.) Purchase, directly or indirectly, any property of an estate in bankruptcy.

Judge Blatchford held that proceedings before a register are under his control, and should be conducted without reasonable delay, but that no inflexible rule can be prescribed as to postponements. In re Hyman, 3 Ben. 28; 12 Fed. Cas. 1134.

Where a part of the bankrupt's property is covered by a lien for its full value, the assignee in bankruptcy will not be required to determine the priority or validity of subsequent liens. Mattocks v. Ferrington, 2 Hask. 331; 16 Fed. Cas. 1147.

A general reference to the register was held to be sufficient to authorize him to take testimony regarding the claim of the petitioning creditors for costs and disbursements. In re Robinson, 43 How. Pr. 25; 20 Fed. Cas. 980.

COMPENSATION.

§ 40. **Compensation of Referees.**— (a.) Referees shall receive, as full compensation for their services, payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

(b.) Whenever a case is transferred frm one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

(c.) In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

In the case cited, are discussed allowances to registers, services for which charges are allowable, and how questions concerning such charges can be raised. In re Sherwood, 1 N. B. R. 344; 21 Fed. Cas. 1286 (1868).

After the deposit for costs had been exhausted, and no assets had come into the hands of the assignee, the court ordered the bankruppt, in a proceeding of involuntary bankruptcy, to pay the register's and clerk's costs. In re McBride, 15 Fed. Cas. 1218.

It was held under the Act of 1867 that the court, and not the clerk, should fix the fees of the register, and that the register could be compelled to pay any excess of fees received by him into the court. In re Portington et al., 8 Ben. 173; 19 Fed. Cas. 1082.

The fees taxed by a register for his own services are considered by Judge Blatchford in the case cited. In re Robinson, 2 Ben. 145; 20 Fed. Cas. 974.

CONTEMPTS.

§ 41. **Contempts Before Referees.**—(a.) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of

his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b.) The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

Where a bankrupt refuses to answer a proper question upon examination before the register, the court will compel him to answer. In re Holt, 3 N. B. R. 241; 12 Fed. Cas. 428.

A custodian of the estate of the bankrupt *ad interim* had been appointed, and the register had ordered the bankrupt to pay over to him certain moneys. Held, that disobedience of such an order was a contempt. In re Speyer et al., 6 N. B. R. 255; 22 Fed. Cas. 928.

It was held under the Act of 1867 that a malicious attack upon the character of a register in bankruptcy in a paper filed in court was a contempt of court. In re Breck et al., 13 N. B. R. 216; 4 Fed. Cas. 44.

[See notes to § 21]

RECORDS.

§ 42. **Records of Referees.**— (a.) The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

(b.) A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

(c.) The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

VACANCIES.

§ 43. **Referee's Absence or Disability.**—(a.) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act,

the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

TRUSTEES — APPOINTMENT, QUALIFICATIONS, REMOVAL, ETC.

§ 44. **Appointment of Trustees.**— (a.) The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

§ 45. **Qualifications of Trustees.**— (a.) Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

§ 46. **Death or Removal of Trustees.**— (a.) The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

When only one creditor proves his debt or attends the meeting, he is entitled to name the assignee. Anon., 1 N. B. R. 216; 1 Fed. Cas. 1013.

When only one creditor appears at a meeting of creditors to elect an assignee, he has the right to make the election. In re Haynes, 2 N. B. R. 227; 11 Fed. Cas. 914.

It is optional with creditors who have proved their claims whether they will or will not wait for others to prove before proceeding to elect an assignee. In re Lake Superior Ship Canal R. I. Co., 7 N. B. R. 376; 14 Fed. Cas. 951.

When a creditor is added by an amendment to the bankrupt's schedule, it is not necessary to hold another meeting of the creditors to elect an assignee, if one has already been chosen. In re Carson, 5 Ben. 277; 5 Fed. Cas. 172.

The result of an election of assignee cannot be changed by the votes of those who filed their proof of claims after the election. In re Lake Superior Ship Canal R. I. Co., 7 N. B. R. 376; 14 Fed. Cas. 951.

Creditors who have received payment under the terms of a composition which is set aside cannot vote at an election of assignee to proceed with the administration of the estate. Ex parte Hamlin, 2 Low. 571; 1 Fed. Cas. 367.

When a separate adjudication is made against a bankrupt who is, or has been a member of a firm, his individual creditors have a right to vote for assignee. In re Falkner, 16 N. B. R. 503; 8 Fed. Cas. 973.

A power of attorney given to a firm to vote for the election of an assignee can only be exercised by all the members of the firm. In re Foye, 2 Low. 399; 9 Fed. Cas. 649.

The register has no power without special order of the court to inquire into the right of creditors to vote in the election of an assignee. The fact that persons fraudulently and by collusion claiming to be creditors voted in such election may be presented to the court as a reason why such election should not be approved. In re Noble, 3 Ben. 332; 18 Fed. Cas. 282 (1869).

One member of a firm can cast the vote of a firm at a meeting of creditors for the full amount of the debt; but as to joint creditors who are not partners neither can act or vote without the authority of the other. In re Purvis, 1 N. B. R. 163; 20 Fed. Cas. 74.

The vote of a creditor for assignee which was procured by corruption should be excluded; but it does not invalidate the election unless it changed the result. In re Pfromm et al., 8 N. B. R. 357; 19 Fed. Cas. 415.

Under the Act of 1867 it required the votes of a majority of all who had proved claims to elect an assignee, and a majority of votes cast was not sufficient. In re Purvis, 1 N. B. R. 163; 20 Fed. Cas. 74.

Neither an agent nor an attorney-at-law of a creditor can vote for assignee unless duly constituted an attorney in fact. Ibid.

A creditor cannot vote at a meeting when his claim is exceeded by a set off for a debt due to the bankrupt. In re Purcell, 18 N. B. R. 447; 20 Fed. Cas. 61.

The question submitted being whether a creditor having a mortgage upon the homestead of the bankrupt in Kansas to secure his demand, has a right to prove his demand, and vote on the choice of an assignee in bankruptcy, it was answered in the affirmative. In re Stillwell, 7 N. B. R. 226; 23 Fed. Cas. 89.

One member of a firm can execute a power of attorney to a third person authorizing him to cast the vote of the firm for the election of the assignee. In re Barrett, 2 Hughes, 444; 2 Fed. Cas. 909.

Judge Lowell condemned the practice of procuring creditors with small privileged claims for wages to prove their debts at the first meeting, so as to vote for assignee, and intimated that he might refuse to confirm such an election. At the same time he denied a motion to reject the proofs of such claims. In re Houghton, 2 Low. 243; 12 Fed. Cas. 588.

Property was sold at public auction after the adjudication of the mortgagor on a mortgage for $15,000. The mortgagee purchased it for $142.50 and then proved up the deficiency against the estate of the mortgagor in

bankruptcy. His vote on the claim so proved controlled the election of the assignee. The court held that such a method of ascertaining the value of the security was not contemplated by the Act of 1867, and that the election of the assignee was irregular. In re Hunt, 17 N. B. R. 205; 12 Fed. Cas. 902.

"It is only the creditors who have proved their debts that can participate in choosing an assignee. The proving of debts must, therefore, precede the choosing of an assignee; but it may often happen that a bankrupt owes a hundred or more debts and that it may be impossible, owing to the complicated nature of some, to go through the proofs of one-tenth of them on the day designated in the warrant of notice. If, therefore, in such case a meeting cannot adjourn to the next or another day to take proof of other debts, it will follow that a power which the statute contemplates shall be exercised by a greater part in number and value of the whole, is actually exercised by one-half of the creditors representing but a small portion of the debts. The plainest principles of justice would require such an adjournment from day to day as would furnish proper opportunity to all creditors present to prove their debts, and thus qualify themselves to join in selecting an assignee." In re Phelp et al., 1 N. B. R. 525; 19 Fed. Cas. 436.

An attorney for creditors is eligible to election as assignee. In re Lawson, 2 N. B. R. 113; 15 Fed. Cas. 88; In re Barrett, 2 Hughes, 144; 2 Fed. Cas. 909.

It was held to be a sufficient objection to an appointment of an assignee that he was a director of a bank to whom the bankrupt had given a preference. In re Powell, 2 N. B. R. 45; 19 Fed. Cas. 1211.

When an assignee has been chosen in the interest of the bankrupt, or through his influence, the court will refuse to confirm the election. In re Bliss, 1 Ben. 407; 3 Fed. Cas. 705.

Judge Lovell expressed the opinion that a nonresident of the district, or a person who has an interest antagonistic to that of the general creditors, or the attorney of the bankrupt, should not be chosen assignee; but that the objections do not extend to a general creditor or his attorney, or to a former attorney of the bankrupt. In re Clairmont, 1 Low. 230; 5 Fed. Cas. 810.

Judge Blatchford refused to to confirm the election of an assignee who had made it a regular business to seek out creditors and solicit them to prove their debts and vote for him. In re Doe, 2 N. B. R. 308; 7 Fed. Cas. 802.

Under the Act of 1867 the court refused to confirm the election of an assignee who resided out of the district. In re Havens, 1 N. B. R. 485; 11 Fed. Cas. 849.

The court refused to sanction the election of an assignee when there was only one creditor present at the meeting, and he voted for a person who was a stranger to himself and who had solicited his vote. In re A. B., 3 Ben. 66; 1 Fed. Cas. 2.

An assignee chosen at a meeting of creditors had promised to pay the claims of two creditors in full to procure their powers of attorney to vote at such meeting. The court refused to confirm the election. In re Haas et al., 8 N. B. R. 189; 11 Fed. Cas. 138.

In the absence of evidence of bad character or incompetency, the court will not interfere with the election of an assignee chosen by a majority of the creditors in number and value. In re Grant, 2 N. B. R. 106; 10 Fed. Cas. 973.

A receiver had been appointed under a state law for an insolvent bank. Subsequently, proceedings in bankruptcy were commenced, and the creditors elected the receiver trustee. They also elected a committee of creditors, one of whom was the president of a bank which claimed to be a preferred creditor. The court refused to confirm the election of the trustee or the committee, and appointed an assignee. In re Stuyvesant Bank, 5 Ben. 566; 23 Fed. Cas. 339.

It is the duty of the court of bankruptcy to see that the rights of creditors are protected in the choice of an assignee; and the court set aside the election of an assignee who had been a bookkeeper of the bankrupt, and when the bankrupt and his attorney seemed to control the action of the creditors. In re Wetmore et al., 16 N. B. R. 514; 29 Fed. Cas. 842.

Decision by register: "It has been uniformly held by the courts that they will not affirm the election or appointment of an assignee who is a relative of the bankrupt." In re Zinn, 4 N. B. R. 370; 40 How. Pr. 461; 30 Fed. Cas. 935.

The mere fact of the relationship in the ninth degree or less of the proposed trustee, on the part of the bankrupt or of the largest creditor, is no disqualification. In re Zinn, 4 Ben. 500; 4 N. B. R. 436; 30 Fed. Cas. 934 (1871).

Under the Act of 1867 the court had authority to approve or disapprove of the election of an assignee by the creditors; but it was held that this was a legal discretion, and where the choice was made by a large majority both in number and amount, the court could not refuse to confirm upon mere rumors of commercial dishonesty. In re Funkenstein et al., 1 Pac. Law Rep. 11; 9 Fed. Cas. 1004.

Several members of the family of one of the members of a bankrupt firm had proved claims against the estate. His son was elected assignee. The court refused to confirm the election. In re Bogart et al., 3 N. B. R. 651; 3 Fed. Cas. 803.

When there are no assets and no creditors have proved debts, an assignee should nevertheless be appointed. Anon., 1 N. B. R. 122; 1 Fed. Cas. 1012.

Judge Longyear, of the district court of Michigan, said that the Bankrupt Act of 1867 prescribed no particular manner of voting for assignee, and added: "It may be assumed, therefore, that any mode or manner of voting by which the choice of each creditor entitled to vote is clearly expressed is sufficient. It may no doubt be taken by ballot, or *viva voce*. It may be taken by calling the name of each creditor, or by calling upon

the person or persons representing creditors by power of attorney to name the choice of the creditor or creditors represented by him." In re Lake Superior Ship Canal R. I. Co., 7 N. B. R. 376; 14 Fed. Cas. 951.

Judge Blatchford decided, under the Act of 1867, that when no creditor had proved his debt at the time fixed for the first meeting of creditors, the judge or register could appoint an assignee. In re Cogswell, 1 Ben. 388; 6 Fed. Cas. 11.

The bankrupt himself could be heard in objection to the appointment of an assignee under the Act of 1867. In re McGlyn, 2 Low. 127; 16 Fed. Cas. 122.

At the first meeting of creditors, the selection of a certain assignee was expressly opposed. The meeting was adjourned to a subsequent day, when, the opposing creditors not being present, the assignee first proposed was selected, and the register reported that he was chosen without opposition. The facts being presented to the court, it was held that the register erred in so reporting, and that he should have reported the facts, the adjourned meeting being but a continuance of the first meeting. In re Norton, 18 Fed. Cas. 416 (1873).

The court held that the appointment of an assignee by a register should be annulled, though no formal objection was made at the time by any of the creditors, but where there was shown to be an opposing interest. In re Pearson, 2 N. B. R. 477; 19 Fed. Cas. 65.

Held, under the Act of 1867, that a register cannot directly or indirectly interfere with the choice of the assignee by creditors. In re Smith, 2 Ben. 113; 22 Fed. Cas. 381.

Under the Act of 1800, Judge Cranch instructed the jury that where an assignee in bankruptcy was plaintiff, he must prove himself to be duly appointed by producing the original commission and the proceedings thereon, or a certified copy thereof and the original deed of assignment. McIver v. Moore, 1 Cranch C. C. 90; 16 Fed. Cas. 153 (1802).

Irregularity in the proof of a claim which did not affect the result of the election of assignee is not sufficient ground for setting the election aside. In re Jackson, 7 Biss. 280; 13 Fed. Cas. 191.

Creditors who have not been allowed to prove their claims so as to vote for assignee without fault of their own, may apply to the court, and on a proper showing the court will set aside the result and order a new election. In re Lake Superior Ship Canal R. I. Co., 7 N. B. R. 376; 14 Fed. Cas. 951.

Under the Act of 1867, an order to set aside the appointment of an assignee could only be made by the district judge, and upon notice. In re Stokes, 1 N. B. R. 489; 23 Fed. Cas. 134.

The court refused to sanction the election of a trustee, and a committee to supervise his action, under section 43 of the Act of 1867, which consisted of only two members, one of whom was the trustee himself. In re Stillwell, 2 N. B. R. 526; 23 Fed. Cas. 88.

Under the Act of 1867, even after an assignee has been duly appointed, a creditor may arrange by trust deed to have the assignee removed, and

in his stead to have trustees appointed to administer the bankrupt's estate. In re Jones, 2 N. B. R. 59; 13 Fed. Cas. 933.

The removal of an assignee by the district court will not be reviewed by the circuit court. In re Adler, 2 Woods, 571; 1 Fed. Cas. 176.

Where an application was made for the removal of an assignee the court ordered the register to employ counsel to represent the estate on the order to show cause. In re Price, 4 N. B. R. 406; 19 Fed. Cas. 1313.

The assignee was clerk of the bankrupt's attorney and was charged by creditors with mismanagement of the estate. Under the circumstances of the case, the court removed him, and appointed a new assignee; but it appearing that the former assignee had acted in good faith, the costs of the proceedings were ordered to be paid out of the estate. In re Malory, 4 N. B. R. 153; 16 Fed. Cas. 546.

Where a new warrant is issued containing the names of creditors that have been added by an amended petition after the election of an assignee, the assignee should not be removed without an application, of which all the creditors should have notice. In re Perry, 1 N. B. R. 220; 19 Fed. Cas. 263.

An assignee who had permitted the bankrupt's real estate to be sold for taxes was removed, notwithstanding he had acted on the advice of counsel, and was ordered to pay from his own funds the costs of the petition for his removal. In re Morse, 7 N. B. R. 56; 17 Fed. Cas. 848.

The court refused to remove an assignee for involving the estate in needless litigation when it appeared that it was done on the advice of counsel. In re Blodget et al., 5 N. B. R. 472; 3 Fed. Cas. 716.

Where a resolution for the removal of an assignee was passed by the votes of parties whose claims the assignee was seeking to impeach, the court refused to remove him. In re Dewey, 1 Low. 490; 7 Fed. Cas. 572.

DUTIES.

§ 47. **Duties of Trustees.**— (a.) Trustees shall respectively

(1.) Account for and pay over to the estates under their control all interest received by them upon property of such estates;

(2.) Collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest;

(3.) Deposit all money received by them in one of the designated depositories;

(4.) Disburse money only by check or draft on the depositories in which it has been deposited;

(5.) Furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest;

(6.) Keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts;

(7.) Lay before the final meeting of the creditors detailed statements of the administration of the estates;

(8.) Make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors;

(9.) Pay dividends within ten days after they are declared by the referees;

(10.) Report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and

(11.) Set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

(b.) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

An assignee in bankruptcy can recover money loaned by the bankrupt after the petition was filed and before adjudication. Crompton et al. v. Conkling, 9 Ben. 225; 6 Fed. Cas. 848.

An assignee in bankruptcy has the right to bring suit to protect the estate, notwithstanding the pendency of a creditor's suit brought in aid of the estate, in which suit a receiver has been appointed. Shainwald v. Davids, 69 Fed. Rep. 687.

An assignee in bankruptcy has a right to file a bill in chancery against all incumbrancers of the bankrupt's property, to test their validity, priority and amount. McLean v. LaFayette Bank et al., 3 McLean, 415, 587; 16 Fed. Cas. 258, 264 (1844-6).

The assignee, and not the bankrupt, is the proper party to bring a writ of error to a judgment against the latter when he has received his discharge pending the action. Knox v. Exchange Bank, 12 Wall. 379.

Under section 5198, R. S., a person who has paid usurious interest to a national bank, or his "legal representative," may recover back twice the amount of the interest so paid. Held, that an assignee in bankruptcy could maintain an action for that purpose. Markson v. First National Bank, 9 Chi. Leg. News, 108; 16 Fed. Cas. 768.

Where property was held by the defendant under claims in different rights, it was held that the proper remedy for an assignee in bankruptcy seeking to recover the same was a suit in the form of a creditor's bill, and that it was no objection to such proceeding that there were other cred-

itors of the defendant. Stotesbury et al. v. Cadwallader et al., 31 Leg. Int. 229; 23 Fed. Cas. 176.

The marshal seized goods belonging to the bankrupt which were subsequently delivered to an alleged purchaser upon his giving a forthcoming bond. The alleged sale was set aside as fraudulent, and this decision was confirmed in the supreme court. The purchaser was insolvent. The court of bankruptcy decided that the assignee might proceed on one of the appeal bonds, or upon the forthcoming bond, without first enforcing the same against the estate of the purchaser, and that it was not necessary to resort to a plenary action. Storrs et al. v. Engle et al., 3 Hughes, 414; 23 Fed. Cas. 165.

The assignee sued a debtor on the common counts. The defendant set up that before the commencement of proceedings in bankruptcy, he had brought his suit against the bankrupts, and that the bankrupts had claimed by way of set-off the same money sued for by the assignee, and for the same cause of action, and that that suit was still pending. A demurrer to the plea was sustained. Miller v. Del., L. & W. R. Co., 17 Fed. Cas. 314.

After the filing of the petition, a note was given to the bankrupt for the payment of a book account, and deposited in bank for collection and paid at maturity. This was held, in an action brought by the assignee for the amount of the note, to discharge the maker. Galvin v. Boyd, 25 Fitz. L. J. 14; 9 Fed. Cas. 1140.

The court of bankruptcy made an assessment upon all the premium notes belonging to the bankrupt, a mutual insurance company. This was held not to be such an adjudication as to prevent the maker pleading a defense to the note when an action was brought upon it by the assignee. Lamb v. Lamb, 6 Biss. 420; 14 Fed. Cas. 1016.

The interests of creditors will be considered, notwithstanding the expense and delay of litigation to recover assets of the bankrupt. In re Rowe, 18 N. B. R. 429; 20 Fed. Cas. 1280.

The bankruptcy of an insurance company cannot be set up as a defense to an action on a note given for a premium, brought by the assignee in bankruptcy. Carey v. Nagle, 2 Biss. 244; 5 Fed. Cas. 60.

In this case the court decided under the Act of 1800 that on the death of an assignee in bankruptcy the right of action for a debt due the bankrupt vested in his executor. Richards v. Maryland I. Co., 8 Cranch, 84.

The omission in a bill in equity by an assignee to allege that there had been an adjudication is not fatal when it sets up the filing of the petition, the appointment of the assignee and the assignment to him. Lakin v. First Nat. Bank, 13 Blatchf. 83; 14 Fed. Cas. 959.

An adjudication in bankruptcy is an essential prerequisite and condition precedent to the power of a register to make assignment of a bankrupt's estate. The adjudication must, therefore, be alleged in a suit by an assignee under such assignment brought to recover the property of the alleged bankrupt. Wright v. Johnson, 8 Blatchf. 150; 4 N. B. R. 626; 30 Fed. Cas. 678 (1871).

Judge Hopkins, of the district court of Wisconsin, in a very elaborate opinion, held that an assignee in bankruptcy can sue and collect the assets of the bankrupt in any other court than that in which the bankrupt proceedings are pending; that this right was conferred by the Act of 1867 in the authority given the assignee "to collect the assets." Goodall v. Tuttle, 3 Biss. 219; 10 Fed. Cas. 579.

Under the Act of 1867, an assignee could be required to furnish security for costs when he was prosecuting expensive litigation, and was substantially without funds belonging to the estate. Forman v. Campbell, 9 Ben. 472; 9 Fed. Cas. 450.

The district court for the district of Rhode Island decided that under the Act of 1867 an assignee in bankruptcy could proceed against a party claiming property adversely only by an action at law or a suit in equity; but did not decide whether the adverse claimant might not proceed against the assignee by a summary petition. Ferguson et ux. v. Peckham et al., 6 N. B. R. 569; 8 Fed. Cas. 1152.

A bankrupt, who was then living in North Carolina, when proceedings were commenced in 1868, owned certain railroad bonds which he had deposited as collateral for debts that were subsequently paid; and he omitted these from his schedule. Soon afterward, he removed to New Jersey, and died there in 1877. Thereafter, the assignee in bankruptcy brought suit to recover the bonds. The court decided that the suit could be maintained, and that the delay did not afford evidence of laches. Fullings v. Fullings, 3 N. J. L. J. 270; 9 Fed. Cas. 991.

An assignee represents the creditors of the bankrupt, as well as the bankrupt himself, and it follows that he can take advantage of any remedy that would be open to an attaching creditor. So held in a case where the levy of an execution on the personal property of the bankrupt was declared void, because it was not made in conformity with the laws of the state. Beers et al. v. Place et al., 4 N. B. R. 459; 3 Fed. Cas. 71.

To maintain a suit in equity against a person in possession of property and claiming to own it for an injunction restraining him from intermeddling with it, an assignee in bankruptcy must show clearly the existence of some peril which a court could not redress. Beecher v. Bininger et al., 7 Blatchf. 170; 3 Fed. Cas. 49.

It is not necessary for an assignee to sue a bankrupt for money that he appears to have in his hands; the court may make a summary order for him to turn it over. In re How, 18 N. B. R. 565; 12 Fed. Cas. 621.

To establish his right to bring a suit for assets, it is only necessary for the assignee to prove the adjudication and his appointment. Carr v. Gale, 2 Ware, 330; 5 Fed. Cas. 118 (1847); affirmed, Carr v. Gale, 3 W. & M. 38; 5 Fed. Cas. 123.

An assignee may continue the defense of a suit necessary to establish the right of the bankrupt to an interest in real estate, if the creditors do not object, and the estate will be liable for the expense. In re Babcock, 1 Woodb. & M. 26; 2 Fed. Cas. 292 (1845).

In a case where the bankrupt had secured goods by fraud, and they had passed into the possession of his assignee in bankruptcy, it was held that they might be reclaimed from the latter as they could have been reclaimed from the bankrupt himself. Donaldson v. Farwell, 93 U. S. 631.

In the adjustment of a usurious loan, an assignee in bankruptcy cannot surrender the benefit of the equitable principle which requires that payments of excessive interest shall be applied in liquidation of the principal. The court considered without deciding whether he is bound to set up usury in defense against a claim otherwise valid and meritorious. In re Hoole, 3 Fed. Rep. 496.

A debtor of a bankrupt whose debt had accrued before the commencement of the proceedings, but who had no notice or knowledge of his bankruptcy, paid the debt to the bankrupt in the usual course of business. Held, that the assignee could maintain an action against him for the debt, notwithstanding such payment. Howard et al. v. Crompton, 14 Blatchf. 328; 12 Fed. Cas. 639.

If the assignee in bankruptcy is satisfied that property taken by him does not belong to the bankrupt, it should be returned without delay to the owner; otherwise the claimant must seek redress by appropriate action in the courts of the state, and if successful the costs of the assignee may or may not be allowed him in the discretion of the bankrupt court. This will depend on whether the assignee was right in taking and holding the property in dispute. In re Noakes, Bankr. Ct. Rep. 162; 18 Fed. Cas. 281.

Where the holder of a bill of exchange proved his debt in bankruptcy against the acceptor and also brought a suit at law against the drawers and attached their property, it was held that he was not obliged to pursue the suit at law at his own expense, and if he did not, the assignee should conduct it for the benefit of the bankrupt's estate and at its expense. In re Babcock, 3 Story, 393; 2 Fed. Cas. 289 (1844).

An assignee in bankruptcy is not obliged to sell mortgaged property of the bankrupt unless its value exceeds the mortgage lien. McHenry v. La Societe Francaise, 95 U. S. 58.

An assignee in bankruptcy is not bound to take possession of property which would be of no benefit to the estate. He must exercise his election within a reasonable time. If he elect not to take possession, the property remains in the bankrupt and his possession is good against all the world but the assignee. Smith v. Gordon et al., 2 N. Y. Leg. Obs. 325; 22 Fed. Cas. 554 (1843).

When the personal property of the bankrupt is mortgaged beyond its value, the assignee in bankruptcy has no other duty than to set apart exempt property to the bankrupt. In re Lambert, 2 N. B. R. 426; 14 Fed. Cas. 1045.

An assignee in bankruptcy represents the creditors as well as the bankrupt, and in the former capacity no defense could be set up against him which could not be set up if the suit was solely in the interest of

creditors, so far as concerns the validity of stock upon which he was seeking to collect unpaid subscriptions. Upton v. Jackson, 1 Flipp. 413; 28 Fed. Cas. 844.

Mortgagees of the bankrupt asked that the assignee be ordered to satisfy their claim out of the funds in his hands after a sale of the mortgaged goods. The assignee replied that the mortgage was void as to creditors, and this was established in proof. It was then claimed that the assignee could not set up this defense, as he succeeded only to the rights which the bankrupt had, and that as between the parties the mortgage was valid. The court held that the assignee represented the whole body of creditors, and that it was his right and duty to contest the validity of the mortgage. In re Metzger, 2 N. B. R. 355; 17 Fed. Cas. 231.

The stockholders of a bankrupt corporation had paid 20 per cent. on their subscriptions, but were liable for the remaining 80 per cent. in the event of the cash fund becoming impaired by losses. The entire funds of the company having been exhausted, it was held that it was not competent for the assignee on his own motion to make an assessment on unpaid balances, and that before he could recover from the stockholders of the corporation, there must have been either corporate action to fix, or a judicial assignment of, the defendant's liability. Payson v. Brooke, 19 Fed. Cas. 17.

Among the property that came into the hands of the assignee were some unfinished locomotives. The court authorized the assignee to expend money belonging to the bankrupt estate in finishing them, saying: "There is no express provision in the statute touching this point; but upon careful reflection I am satisfied that where a great advantage will result to the estate, and within a reasonable time, the assignee may be permitted to expend money in this way." Foster et al. v. Ames et al., 1 Low. 313; 9 Fed. Cas. 527.

The stockholders of a corporation had pledged its bonds, secured by mortgage, to secure a personal indebtedness. Thereafter the pledgee became bankrupt. The corporation also became insolvent, and its stockholders liable for its debts. The creditor agreed to take the bonds and secured the assignee in bankruptcy from liens as a stockholder. Under these circumstances, it was held that he could enforce the individual liability of other stockholders. Further held that as the assignee had never consented to become a stockholder, there was no liability on his part. American File Co. v. Barrett, 110 U. S. 288.

The only relation the assignee sustains to the bankrupt, or office he performs for him, is to set aside his exempt property; in all else he is agent of the law for the benefit of the creditors; in other words, his duty is to collect the bankrupt's estate for distribution among the creditors according to their respective rights and priorities. Aiken v. Edrington, 15 N. B. R. 271; 1 Fed. Cas. 238.

An assignee in bankruptcy of a corporation does not represent its creditors for the purpose of enforcing a claim against an officer under a

statute making him personally liable for the debts of the corporation. Bristol v. Sanford, 12 Blatchf. 341; 4 Fed. Cas. 162.

An assignee in bankruptcy may be required by the district court to take whatever steps are necessary for the protection of the rights of creditors. Glenny v. Langdon, 98 U. S. 20; Trimble v. Woodhead, 102 id. 647.

An assignee in bankruptcy has no standing in the controversies between secured creditors unless they shall affect the estate to which he is entitled. Dudley v. Easton, 104 U. S. 99.

It was held, under the Act of 1800, that an assignee could not impeach the authority of the commissioners under whom he received the property of the bankrupt. Gulick's Executors v. McIver, 3 Cranch C. C. 650; 11 Fed. Cas. 110 (1804).

An assignee can retain his fees and commissions out of funds in his hands, but not money to cover further expected allowances. He is liable to the estate for interest lost by his failure to deposit funds in bank. In re Burt, 27 Fed. Rep. 548.

Under the Act of 1874, the assignee must sell at auction notes belonging to the bankrupt. If he allows them to be barred by limitation, he is liable for the loss — that being the amount which could have been collected on them. In re Newcomb, 32 Fed. Rep. 826.

The assignee having, without the approval of the court, sold real estate, taking a bond secured by mortgage, the property becoming inadequate to meet the price, it is proper to order the mortgage to be transferred to the assignee in his own right, he assuming the amount due on the purchase price. Ibid.

An assignee holding a lien, and being permitted by the court to bid on property of the estate at sheriff's sale, there being no fraud, will not be chargeable with the profit arising from the transaction. In re Carrier, 39 Fed. Rep. 193.

The court sustained the right of petitioners who had been injuriously affected, although they were not parties to the bankruptcy proceedings, to set aside the acts of an assignee in bankruptcy upon the ground of fraud and illegality. In re King, 3 Fed. Rep. 839.

In a case where new assets were discovered after the death of the assignee in bankruptcy, the court appointed a new assignee to collect them, notwithstanding the right of the estate to such assets was doubtful and subject to litigation. In re Mahoney et al., 5 Fed. Rep. 518.

The supreme court here considered the difference between the functions of an assignee in bankruptcy and those of a receiver appointed by a court of equity. Booth v. Clark, 17 How. 322.

An assignee in bankruptcy is an officer of the court, and is limited in that capacity to the powers and authority conferred upon him by the Bankruptcy Act and the orders of the court. Anything he may do outside of, or in conflict with, or in violation of such powers and authority is of course null and void. In re Ryan, 6 N. B. R. 235; 21 Fed. Cas. 104 (1872).

An assignee in bankruptcy is not estopped by a judgment, notwithstanding it would work an estoppel against him in his personal capacity. Abendroth v. Durant, 1 Fed. Rep. 849.

A trustee under an assignment for the benefit of creditors was subsequently appointed assignee in bankruptcy. Held, that his acts in the former capacity must be adopted so far as they were in accordance with the deed of assignment. In re Walker, 18 N. B. R. 56; 29 Fed. Cas. 3.

It is contempt of a court of bankruptcy for an assignee to take any measure in a state court without leave. In re Smith, 2 Hughes, 284; 22 Fed. Cas. 391.

The court said that no duty was imposed upon an assignee by law to institute a search, or even an inquiry, with respect to the interest of the bankrupts under a will, which was not mentioned in their schedules, nor indicated to the assignee by any of the creditors. In re Mott et al., 17 Fed. Cas. 902.

Under the Act of 1867 an order of the district court for the payment of a claim on a hearing of which the assignee had no notice, was reversed to give him an opportunity to resist the claim. In re Mitteldorfer et al., Chase, 276; 17 Fed. Cas. 534.

A levy having been made on goods of the bankrupt after the filing of his petition, it was held that the assignee should make a sale of the goods, and deposit the proceeds subject to the further determination of the court. Pennington v. Sale et al., 1 N. B. R. 572; 19 Fed. Cas. 169.

Judge Hughes, of the district court of Virginia, decided that an assignee in bankruptcy cannot obtain the direction of the court as to the mere administration of his trust in matters that are within is own power and discretion, unless some opposing interests raised an issue. Estate of Franklin S. F. Soc., 31 Leg. Int. 173; 9 Fed. Cas. 715.

The Act of 1867 did not authorize a court of bankruptcy to empower the assignee to compromise all doubtful debts with the consent of a committee of creditors. In re Dibblee et al., 3 Ben. 354; 7 Fed. Cas. 657.

Under the Act of 1867 the execution of a deed of assignment, and the transfer of the property, made the assignee a trustee in possession for the equal benefit of all creditors. In re Kimball, 1 N. Y. L. J. 230; 14 Fed. Cas. 480.

Where the estate of the bankrupt has been settled and no debts proved, the surplus funds in the hands of the assignee will be turned over to the bankrupt on his verified petition, showing a proper case therefor. In re Hoyt, 3 N. B. R. 55; 12 Fed. Cas. 760.

An assignee cannot be compelled to account to any court other than that which appointed him. In re Bowie, 1 N. B. R. 628; 3 Fed. Cas. 1067.

Funds in the hands of an assignee in bankruptcy are not taxable by the state. In re Boothroyd, 14 N. B. R. 232; 3 Fed. Cas. 881.

Judge Lowell, of the district court of Massachusetts, commenting upon, and dissenting from the opinion of the register in the Boothroyd case (14 N. B. R. 232; 3 Fed. Cas. 881), decided that funds in the hands of

an assignee in bankruptcy may be taxed under the laws of a state. In re Mitchell, 16 N. B. R. 535; 17 Fed. Cas. 493.

Funds in the hands of an assignee in bankruptcy are not subject to garnishment. In re Cunningham, 19 N. B. R. 276; 6 Fed. Cas. 958.

Money belonging to the estate of a bankrupt in the hands of an assignee in bankruptcy is not subject to attachment. In re Chisholm et al., 4 Fed. Rep. 526.

It was held that the assignees of a bankrupt, under the laws of England, could not maintain an action against a debtor of the bankrupt in this country in their own name. Perry et al. v. Barry, 1 Cranch C. C. 204; 19 Fed. Cas. 266.

It was held that trustees, under section 43 of the Act of 1867, could settle the estate under the direction of the committee, or the court might limit them to the powers and duties exercised by assignees. In re Darby, 4 N. B. R. 309; 6 Fed. Cas. 1177.

Previous to the proceedings the bankrupt had become the owner of a judgment. Later, he died and an executrix was appointed. Thereafter the judgment was revived by a writ of *scire facias*, the assignee and upon his death his successor, being made a party. The judgment debtor moved to set the proceedings aside. The supreme court held that the writ of *scire facias* was properly sued out by the bankrupt's executrix, and that there was no reason why the bankrupt should be relieved from the judgment. Brown v. Wygant et al., 163 U. S. 618.

It was held, under the Act of 1841, that an assignee might make an allowance for the support of the bankrupt and his family, not exceeding $300; and also that he might employ the bankrupt in taking charge of the property, and pay him a reasonable compensation for such services. In re Grant, 2 Story, 312; 10 Fed. Cas. 973.

An assignee in bankruptcy who is appointed after the commencement of proceedings to foreclose a mortgage given by his bankrupt, and before judgment, is in the position of a purchaser under like circumstances. Eyster v. Gaff, 91 U. S. 521.

The bankrupt and his assignee were directed to convey the property of the former to trustees "subject to the approval of the court." It was held that the trustees had no standing in court until such approval was obtained. Potter v. Wright, 19 Fed. Cas. 1197.

[See notes to §§ 60, 67 and 70.]

COMPENSATION.

§ 48. **Compensation of Trustees.**— (a.) Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may

be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

(b.) In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of an estate a greater amount than one trustee would be entitled to.

(c.) The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

An assignee's bill of costs and fees under the Act of 1867 is reviewed in the case cited. In re Tulley, 2 N. B. R. 82; 24 Fed. Cas. 315.

The fact that an assignee in bankruptcy is an attorney-at-law does not authorize the allowance of any extra compensation. In re Muldaur et al., 8 Ben. 65; 17 Fed. Cas. 958.

Judge Treat held that where the assignee in bankruptcy was an attorney-at-law he might be allowed additional compensation for his services in the conduct of necessary litigation. In re Welge, 1 Fed. Rep. 216.

Judge Blodget held that only the court, and not the creditors, could allow extra compensation to the assignee in bankruptcy, under the Act of 1867. In re Merchants' Ins. Co., 6 Biss. 252; 17 Fed. Cas. 43.

Real estate of the bankrupt was sold by him under the power conferred by a mortgage. The sale was made by leave of the court of bankruptcy, and the mortgagee became the purchaser, no money being received or disbursed by the assignee. Held, under the Act of 1867 (section 5100, R. S.), that the assignee was not entitled to commissions. In re Slevin, 4 Dill. 131; 22 Fed. Cas. 323.

Held, under the Act of 1867 (section 5099, R. S.), that the allowance of compensation to the assignee is within the discretion of the court of bankruptcy, notwithstanding the rules of the supreme court. The court, and not the register, must exercise the discretion, and assignees seeking to recover fees beyond those prescribed in rule 30, must notify creditors. Ex parte Whitcomb, 2 Low. 523; 29 Fed. Cas. 962.

In this case the court held that lack of possession of the bankrupt's property on the part of the assignees did not destroy their right to compensation. "The duty of looking out for the interests of all was as pronounced as though they had the actual compensation, and the lack of possession was only to be considered in determining the amount of the compensation." Meddaugh v. Wilson, 157 U. S. 333.

ACCOUNTS AND RECORDS.

§ 49. **Accounts and Papers of Trustees.**— (a.) The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

BONDS.

§ 50. **Bonds of Referees of Trustees.**— (a.) Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

(b.) Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c.) The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

(d.) The court shall require evidence as to the actual value of the property of sureties.

(e.) There shall be at least two sureties upon each bond.

(f.) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g.) Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h.) Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be

[illegible] by it in the name of the United States for the use of any person [illegible]

[illegible] their bonds, to [illegible] incurred by the [illegible] they are respectively [illegible]

[illegible] bonds

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[illegible] be brought subsequent to [illegible]

[illegible] be brought subsequent [illegible]

THE [illegible] — FEES OF THE COURT.

[illegible] Fees of Clerks.— [illegible] shall respectively (1) account [illegible] the clerk's fee paid in [illegible] received for certified copies [illegible] persons other than officers; (2) [illegible] in each case instituted [illegible] petition of a proposed voluntary [illegible] stating that the petition [illegible] the money with which to [illegible] the referee in application all papers [illegible] offices of such referees are [illegible] offices of such clerks, transmit [illegible] manner return papers which were [illegible] they have been used; (4) and [illegible] has been closed pay to the referee, if [illegible] for him, and to the trustee the fee collected for him at the time of filing the petition.

FEES OF CLERKS AND MARSHALS.

§ 52. **Compensations of Clerks and Marshals.**— (a.) Clerks shall respectively receive as full compensation for their service to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

(b.) Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

The commissions of the clerk of the court under the Bankrupt Act of 1867 are considered in the case cited. Leech v. Kay, 4 Fed. Rep. 72.

The allowance of fees and expenses to a marshal for the custody of property, making inventories and collecting and paying over money to the assignee, is considered at length in In re Johnston et al., 8 Ben. 191; 13 Fed. Cas. 876.

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Under the Act of 1867 a marshal was entitled to a commission for moneys belonging to the bankrupt's estate collected by him as messenger. In re Pfaff, 7 Ben. 61; 19 Fed. Cas. 414.

ATTORNEY-GENERAL.

§ 53. **Duties of Attorney-General.**—(a.) The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

REPORTS OF OFFICERS.

§ 54. **Statistics of Bankruptcy Proceedings.**— (a.) Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

(i.) Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this Act, of whose estates they are respectively trustees.

(j.) Joint trustees may give joint or several bonds.

(k.) If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

(l.) Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m.) Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

OTHER OFFICERS — CLERKS OF THE COURT.

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CHAPTER V.

CREDITORS — MEETINGS.

§ 55. **Meetings of Creditors.**— (a.) The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

(b.) At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

(c.) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this Act.

(d.) A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

(e.) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(f.) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

It was held, under the Act of 1867 that the first meeting of creditors should be kept open for at least one hour. This was decided in the case where the hour was 10 o'clock, and the register closed the polls at

half-past 10. It was held that other creditors who appeared and voted before 11 should be counted. In re Gilley, 2 Low. 250; 10 Fed. Cas. 390.

It was held, under the Act of 1867 that a register could not adjourn a meeting of creditors by letter, or otherwise than by personal attendance at the time and place fixed for the meeting. In re Dickinson, 18 N. B. R. 514; 7 Fed. Cas. 675.

In a case where all the creditors of the bankrupt resided in Germany the petitioner requested the register to fix the first meeting of creditors at twenty days from the date of the warrant. The register decided that sixty days was the shortest time that could reasonably be made, and his action was approved by Judge Blatchford. In re Heys, 1 Ben. 333; 12 Fed. Cas. 91.

VOTERS.

§ 56. **Voters at Meetings of Creditors.**— (a.) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

(b.) Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

An attorney in fact of the creditors, who proved their claim in bankruptcy, employed an attorney-at-law to act for the firm at a creditors' meeting. It was held that the authority of the latter was not sufficient. In re Knoepfel, 1 Ben. 330; 14 Fed. Cas. 782.

It was held, under the Act of 1867 and general order 34, that letters of attorney to represent crediors may be acknowledged before a notary public. In re Butterfield, 14 N. B. R. 195; 4 Fed. Cas. 919.

A bankrupt firm was indebted to the wards of one of the partners on notes running to him as guardian, but not indorsed by him to the wards. The wards, upon coming of age, were held to be competent to vote as creditors. In re Bailey et al., 2 Woods, 222; 2 Fed. Cas. 362.

Where creditors, after proving their claims, sell them, they can take no further part in the proceedings, and the transferee can cast but one vote on such claims. In re Foye, 2 Low. 399; 9 Fed. Cas. 649.

It was held, under the Act of 1867, that a creditor having security could prove his claim, but could not vote for assignee. In re Davis et al., 1 N. B. R. 120; 7 Fed. Cas. 49.

A wife, who was a creditor in her own right, voted in favor of a composition. Afterward her husband filed an affidavit that he had given

her authority to vote. This was held to validate the wife's act. In re Bailey et al., 2 Woods, 222; 2 Fed. Cas. 362.

A secured creditor may vote for assignee on the unsecured portion of his demand. In re Parker, 10 N. B. R. 82; 18 Fed. Cas. 1184 (1874).

Until a creditor has proved his claim, he should not be heard as a creditor, and has no right to be heard in any other character. In re Brisco, 2 N. B. R. 226; 4 Fed. Cas. 152.

After a creditor has proved his claim, and until the court has expunged the proofs, the register cannot refuse to receive the vote of the claimant or exclude him from a dividend. In re Jaycox et al., 7 N. B. R. 303; 13 Fed. Cas. 399.

Chief Justice Chase expressed doubt whether one member of a bankrupt firm should be allowed to represent a claim against the estate as trustee or agent. In re Mitteldorfer et al., Chase, 276; 17 Fed. Cas. 534.

When an indorser of a note pays it to the indorsee, who has proved it in bankruptcy, the latter can take no further part in the proceedings, and the indorser becomes subrogated to his rights. In re Broich et al., 7 Biss. 303; 4 Fed. Cas. 205.

A power of attorney to authorize the person named to represent a creditor in bankruptcy was held not to be invalid for the want of proper revenue stamps. In re Myrick, 3 N. B. R. 156; 17 Fed. Cas. 1131.

At a creditors' meeting for composition, a creditor voted on unsecured debts, but certain secured debts were not considered. Subsequently, he sold the securities, which failed to satisfy the debt for which they were pledged. It was held that not having had the securities valued, the deficiency must be treated as an unsecured debt. Flower v. Greenbaum, 50 Fed. Rep. 190.

Where there were two persons claiming a right to vote on a claim, the register made a decision in favor of one of them, and the other allowed the vote to be taken without further objection. It was held that he could not reopen the question. In re Spencer, 18 N. B. R. 199; 22 Fed. Cas. 914.

In order to entitle a creditor to vote at the first meeting, he should be required to release or surrender any security he may have for the debt voted on. In re Saunders, 13 N. B. R. 164; 21 Fed. Cas. 524 (1875).

FILING, ETC., OF CLAIMS.

§ 57. **Proof and Allowance of Claims.**— (a.) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b.) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the

proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

(c.) Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

(d.) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e.) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the court seems to be owing over and above the value of their securities or priorities.

(f.) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estate and the claimants will permit.

(g.) The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

(h.) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i.) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j.) Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k.) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

(l.) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

(m.) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n.) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

How and by Whom Proved.

Under the Act of 1867 it was not necessary that a power of attorney to prove a claim should be acknowledged. In re Barnes, 1 Low. 560; 2 Fed. Cas. 854.

An account against a bankrupt that has been assigned may be proved by the deposition of the assignee without that of the assignor; but the proof should give the name of the original creditor. Ex parte Davenport, 1 Low. 384; 7 Fed. Cas. 6.

Under the Act of 1867 the oath of an agent in proof of a claim that he is better acquainted with the facts than the principal would not make such proof admissible. In re Whyte, 9 N. B. R. 267; 29 Fed. Cas. 1129.

Held, that the proof of a claim might be made by an agent who has personal knowledge of all the facts required to be proved. In re Watrous et al., 14 N. B. R. 258; 29 Fed. Cas. 419.

A receiver appointed by a court to take charge of the property of a creditor was held to be an assignee of the debt, and competent to prove it in bankruptcy proceedings. In re Mills, 17 N. B. R. 472; 17 Fed. Cas. 397.

Under the laws of Pennsylvania (April 15, 1869), a bankrupt can be a witness in support of a claim by his wife. In re Bean, 14 N. B. R. 182; 2 Fed. Cas. 1120.

The capital stock of a corporation organized under the laws of New York had not been paid within the time provided by the Act authorizing

such corporation. The president of the corporation, having become a bankrupt, made proof as president of a debt due by him to the corporation, though he had previously ceased to be a stockholder. A motion to expunge the proof of debt was denied. In re Morgan, 8 Ben. 186; 17 Fed. Cas. 746.

A debt which has been assigned after the commencement of proceedings in bankruptcy may be proved against the estate either by the assignor or by the assignee. In re Murdock, 1 Low. 362; 17 Fed. Cas. 1010.

After the debt of the bankrupt, a creditor offered to be sworn in proof of his claim against the estate. The register ruled that he was not a competent witness, and certified the question to the district court. The district court decided that the law of the United States, and not of the state, controlled; that the creditor could not be excluded on account of his interest and was otherwise competent, and that the proof of a debt is a proceeding *in rem*, and not an action against the bankrupt or his legal representative. In re Merrill, 9 Ben. 165; 17 Fed. Cas. 80.

On the application of the surety, a court of equity will require a creditor to prove his debt against the principal, provided that the surety brings the amount out into court. In re Babcock, 3 Story, 393; 2 Fed. Cas. 289 (1844).

When a member of a bankrupt firm is also a member of another firm to which the former is indebted, the other partner in the latter firm can prove its debt. In re Buckhause, 2 Low. 331; 4 Fed. Cas. 560.

Proof of a claim against a firm cannot be united with proof of a claim against one of the partners. In re Walton et al., Deady, 510; 29 Fed. Cas. 127.

In proving a claim against a partnership, it should appear clearly whether it was contracted by the firm or the individual partners. Ibid.

The proof of a claim must show that a debt exists in favor of the claimant which he has a present right to have paid out of the estate of the bankrupt; otherwise it will be rejected. Ibid.

Claims should be proved before the register, notwithstanding the proceedings in bankruptcy had been stayed under the provisions of section 43 of the Act of 1867. In re Bakewell, 4 N. B. R. 619; 2 Fed. Cas. 500.

Under the Act of 1867 claims against an estate in bankruptcy could be proved by attorney. In re South Boston Iron Co., 4 Cliff. 343; 22 Fed. Cas. 812.

The creditor's Christian name ought to appear in the proof of a claim though it is omitted in the note upon which the indebtedness was based. In re Valentine, 4 Biss. 317; 28 Fed. Cas. 868.

The rules under the Act of 1867, respecting the proving of debts by nonresident creditors, and the taking of depositions are considered in the case cited. In re Strauss, 2 N. B. R. 48; 23 Fed. Cas. 231.

A proof of debt cannot be taken before an attorney of the creditor; and where such proof is made before a notary public, his official seal must be attached. In re Nebe, 11 N. B. R. 289; 17 Fed. Cas. 1268.

After quoting from section 22 of the Act of 1867, Judge Longyear said: "In this state of the law, I cannot see that the court has any jurisdic-

tion to refuse to receive and file a proof of debt which appears on its face to have been taken by a proper officer, and to be correct in form and in substance. By the receipt and filing of proof of debt, and by it alone, the court obtains jurisdiction of the claim, and of the creditor presenting it; and then and then only does the revisory power of the court over such proof mentioned in the Act of 1868 commence." In re Merrick, 7 N. B. R. 459; 17 Fed. Cas. 75.

When the proof of a claim is by deposition, it must state whether the claim is secured or unsecured. Cunningham v. Cady, 13 N. B. R. 525; 6 Fed. Cas. 966.

Where an indebtedness is evidenced by a note, it must be produced when called for; but this is not the rule when the note has been reduced to a judgment. In re Knoepfel, 1 Ben. 398; 14 Fed. Cas. 783.

Under the Act of 1867 it was held that a debt was not proved where the creditor had only filed a deposition setting forth a claim for unliquidated damages on a breach of contract, but making no application for their assessment. In re Clough, 2 N. B. R. 151; 5 Fed. Cas. 1086.

Judge Lowell expressed the opinion that under the Act of 1867 a debt is to be considered as proved when it is duly authenticated and sent to the assignee or register, without regard to when the formal entry of its allowance is made. Ex parte Harris et al., 2 Low. 568; 11 Fed. Cas. 606.

After the election of a trustee under section 43 of the Act of 1867, a creditor could not prove his claim, but should apply to the court for leave to make such proof. In re Trowbridge, 9 N. B. R. 274; 24 Fed. Cas. 218.

Five years after the discharge of the bankrupt, assets were unexpectedly realized, and a meeting of creditors was called to make a distribution. It was held that a creditor could prove a debt at such meeting, and participate in the dividends under section 28 of the Act of 1867. In re Robinson, 2 Low. 326; 20 Fed. Cas. 981.

Claims existing at the time of the commencement of proceedings may be proved in bankruptcy as long as there is a fund to distribute. In re Maybin, 15 N. B. R. 468; 16 Fed. Cas. 1221.

Claims against a bankrupt cannot be proved after the day upon which the creditors were required to show cause why he should not be discharged. Hester v. Baldwin, 2 Woods, 433; 12 Fed. Cas. 69.

Where proof of a claim has been deferred by the register until after the election of an assignee, it is then to be treated as if it had not been tendered before the election. In re Herrman, 4 Ben. 126; 12 Fed. Cas. 53.

The postponement of the proof of a claim is within the discretion of the register under section 23 of the Act of 1867. In re Jacoby, 13 Fed. Cas. 280.

Debts need not be proved at the hour mentioned in the notice; any time during the session of the court on the day fixed is sufficient. In re Gaylor, 10 Fed. Cas. 119.

A creditor who seeks to prove his claim must do so unreservedly, and is not at liberty to interpose any protest or qualification. Dutton et al. v. Freeman, 5 Law Rep. 447; 8 Fed. Cas. 175 (1842).

In proving a promissory note as a claim against the bankrupt's estate, the holder must set forth the consideration, and whether any payments have been made upon it. In re Loder, 4 Ben. 123; 15 Fed. Cas. 777.

Proof of a claim in bankruptcy by deposition must show the particulars of the consideration. In re Elder, 1 Saw. 73; 8 Fed. Cas. 401.

A creditor cannot make proof of debt before a notary public who is the attorney of record of the bankrupt. In re Keyser, 9 Ben. 324; 14 Fed. Cas. 442.

A creditor represented that a new note had been given for two old notes that he had proved against an estate in bankruptcy, and asked leave to amend his proof. The application was denied, the court holding that he must prove the new note as a new claim. In re Montgomery, 3 N. B. R. 430; 17 Fed. Cas. 622.

When the bankrupt firm has been held liable for a doubtful, but scheduled claim, the court may order the register to adjourn proceedings on a petition for discharge in order that other creditors may have an opportunity to be heard. In re Ketchum et al., 1 Fed. Rep. 838.

Held, under the Act of 1867, that a creditor who had filed and verified a claim which was partly fraudulent could not receive dividends on any part of his claim. Marrett v. Atterbury, 3 Dill. 444; 16 Fed. Cas. 780.

A creditor may waive a claim, but is not permitted to withdraw the proof from the files after it is once made. In re Emison, 2 N. B. R. 595; 8 Fed. Cas. 666.

The authority of the court to authorize a creditor to withdraw the proof of his debt will not be exercised for the purpose of allowing a creditor to continue an arrest of the bankrupt made before the filing of the petition. In re Wiener, 14 N. B. R. 218; 29 Fed. Cas. 1154.

The Act of 1867 (section 5081, R. S.) was construed to give authority to the court to correct any mistake in the proof of a claim made without fraud, and to allow the proof to stand for the sum actually due. In re New Brunswick Carpet Co., 4 Fed. Rep. 514.

In composition proceedings, an unliquidated claim may be determined by the prosecution to judgment of an action pending in the state court, or by direct proceedings in the court of bankruptcy. In the former case, the creditor should take no execution on any judgment he may obtain. Ex parte Trafton, 2 Low. 505; 24 Fed. Cas. 122.

The bankruptcy court has discretion to allow proofs of debt to be amended, and in the absence of fraud will exercise that power in cases of mistake of either law or fact, when all parties remain in the same situation, and where justice demands it. In re Parker, 10 N. B. R. 82; 18 Fed. Cas. 1184 (1874).

Creditors who had filed proofs of their debts which were decided to be insufficient, asked leave to withdraw them from the files. The register refused to permit this, and his action was sustained by the court. In, re Hallie et al., 7 Ben. 182; 11 Fed. Cas. 290.

Under the circumstances of the case, a creditor was allowed to amend the proof of his debt five months after he had filed it, and after he had

been examined by the assignee. In re Montgomery, 3 Ben. 506; 17 Fed. Cas. 620.

Where proof of a claim has been made under a mistake of fact, or even of law, it may be corrected almost as a matter of course, if neither the bankrupt nor any of the other creditors who have proved their claims will be injured. In re Hubbard, 1 Low. 190; 12 Fed. Cas. 775.

It was decided under the Act of 1867 that a register could not order or permit the withdrawal of the proof of a debt after he had passed upon the same, and allowed, certified and transmitted it to the assignee. In re McIntosh, 2 N. B. R. 506; 16 Fed. Cas. 151.

Clerical errors in the proof of a claim may be corrected at any time before the final dividend is declared. In re Myrick, 3 N. B. R. 156; 17 Fed. Cas. 1131.

Where an error had occurred in the proof of a claim the creditor was not allowed to withdraw it, but was allowed to amend his proof. In re Lowerre, 1 Ben. 406; 15 Fed. Cas. 1030.

Secured Claims.

A creditor in proving his claim should set forth the particular character of his lien so that it may be liquidated, if necessary. In re Bridgman, 1 N. B. R. 312; 4 Fed. Cas. 111.

A creditor proving his claim as unsecured will be required to relinquish his securities on the summary petition of the assignee. In re Granger et al., 8 N. B. R. 30; 10 Fed. Cas. 958.

A creditor who has security on property that never belonged to the bankrupt can prove his whole debt without first selling the security. In re Dunkerson et al., 4 Biss. 253; 8 Fed. Cas. 51.

Where a creditor was secured by a mortgage, and the property was subsequently sold under an execution subject to the mortgage, it was held that he could prove his debt as unsecured. In re Kinne, 5 Fed. Rep. 59.

An attachment levied within four months, being dissolved by the assignment by operation of law, the attaching creditor has no lien to surrender, and is not barred from participating in the estate. In re Carrier, 51 Fed. Rep. 900; Duff v. Carrier, 55 id. 433.

A claim in the form of a bond is not to be regarded as secured because the sureties have been indemnified by mortgage. In re Lloyd, 15 N. B. R. 257; 15 Fed. Cas. 711.

An indorsed note is not a secured claim within the contemplation of the Act of 1867 (section 5075, R. S.). In re Broich et al., 7 Biss. 303; 4 Fed. Cas. 205.

A creditor whose attachment is avoided by the terms of the law is not to be regarded as a secured creditor. Ibid.

A creditor who has recovered judgment against a bankrupt after the adjudication need not vacate his judgment before proving the claim on which it is founded, provided the claim was otherwise properly provable. In re Stevens, 4 Ben. 513; 23 Fed. Cas. 1.

The creditor of a firm held securities upon the separate property of one of the members. Held, that he could prove his entire debt against the estate of the partnership without releasing his security. In re Thomas et al., 8 Biss. 139; 23 Fed. Cas. 923.

A party holding security other than the property of the bankrupt may prove for his entire claim, and retain his security. In re Norris, 18 Fed. Cas. 317 (1876).

Where a debt has been guaranteed by another person, the creditor may nevertheless prove it as an unsecured claim. In re Anderson, 7 Biss. 233; 1 Fed. Cas. 829.

Where a claimant was not allowed to prove his indebtedness, the court refused to compel him to surrender the securities given by the bankrupt to secure the rejected claims. Dallet v. Flues et al., 28 Leg. Int. 325; 6 Fed. Cas. 1120.

A creditor who had levied an execution without knowledge of the insolvency of his debtor may relinquish his lien and thereupon prove his debt. Coxe et al v. Hale et al., 10 Blatchf. 56; 6 Fed. Cas. 689.

A secured creditor may prove his claim for the overplus without surrendering his security, but he can only vote on such overplus. In re Bolton, 2 Ben. 189; 3 Fed. Cas.

After the commencement of proceedings in bankruptcy, a secured creditor should first prove his debt, and then ask permission of the court to enforce his security. A sale without such permission will be set aside; or the court may confirm it upon terms, if the property was sold for a fair price. Lee v. Franklin Ave. German Sav. Inst. et al., 3 N. B. R. 218; 15 Fed. Cas. 155.

Under the Act of 1867, a mortgagee was required to prove his debt, and obtain the leave of the court in bankruptcy to have the security sold, otherwise the court would set aside the sale. In re Davis, 2 N. B. R. 391; 7 Fed. Cas. 56.

In a case of which there is no other report than the syllabi, Judge Treat is represented as raising, without deciding, the question whether a sale of a security by a secured creditor, without the leave of the court, passes any title to the purchaser. In re Needham, 1 Chi. Leg. News, 171; 17 Fed. Cas. 1275.

A creditor secured by a deed of trust, after having proved his claim as secured, should procure the leave of the court to sell his security, and if he fails to do so, the sale will be set aside. Ibid.

Under the Act of 1867 creditors secured by mortgage waived their security if they proved their debts in full. Ex parte Morris, 2 Low. 424; 17 Fed. Cas. 783.

Under section 5, Act of 1841, a judgment creditor who proves his debt thereby surrenders his lien upon the lands of the bankrupt. Briggs v. Stephens, 7 Law Rep. 281; 4 Fed. Cas. 124 (1844).

Where a creditor proves his debts as unsecured, he thereby waives any lien he may have upon the property of the bankrupt. White v. Crawford, 9 Fed. Cas. 371.

The signing of a petition in involuntary bankruptcy by a secured creditor operates as a waiver or abandonment of his security. In re Bear et al., 5 Fed. Rep. 53.

A creditor who proves his whole debt as unsecured without disclosing the security was held under the Act of 1867 to waive his lien; but an exception was made in favor of an executor who acted innocently, and in ignorance of the law. In re Bland, 2 Hughes, 334; 4 Fed. Cas. 17.

A secured creditor who joins in a petition without mentioning his security thereby waives it. In re Broich et al., 7 Biss. 303; 4 Fed. Cas. 205.

The creditor who files a petition in involuntary bankruptcy by virtue of a secured debt, without mentioning that he has a lien by judgment, thereby waives his lien. In re Bloss, 4 N. B. R. 147; 3 Fed. Cas. 733.

A foreign firm proved a debt in bankruptcy, a part of which had been collected by a judgment and execution. It was held that it must first pay to the assignee the amount so collected, and release its judgment, and then share equally with the other creditors upon the whole amount of the original indebtedness, with interest to the date of adjudication only. In re Bugbie, 9 N. B. R. 258; 4 Fed. Cas. 609.

A creditor who had been secured by a deed of trust said the property under the power conveyed in such deed. Held, that he might nevertheless prove his debt under the circumstances of the case cited. In re Ruehle, 2 N. B. R. 577; 20 Fed. Cas. 1311.

"If a creditor has a mortgage or pledge for his debt, he may apply to the court to have the same sold, the proceeds thereof applied toward the payment of his debt *pro tanto*, and if the debt is not wholly satisfied out of the security, may prove for the residue." In re Stewart, 1 N. B. R. 278; 23 Fed. Cas. 50.

A secured creditor who proved his claim as unsecured by mistake was allowed to withdraw his proof upon terms, notwithstanding he had received dividends; but was required to return the dividends with interest. In re Baxter, 12 Fed. Rep. 72.

A secured creditor proved his claim under the Act of 1841 in ignorance of the fact that he was required to surrender his securities. The court allowed him to withdraw his proof. Ex parte Harwood, Crabbe, 496; 11 Fed. Cas. 762 (1842).

Where a creditor is secured, but proves his claim as an unsecured debt in ignorance of the fact that he is secured, he should be allowed to withdraw his proof and prove as a secured creditor. If, however, he has accepted a dividend on his first proof to the prejudice of other creditors, he is bound by his election. In re Jaycox et al., 8 N. B. R. 241; 13 Fed. Cas. 408.

A creditor who was abundantly secured made proof of his claim, in ignorance of the law, without mentioning his security. The court allowed him to withdraw his proof and restored him to his former status. In re Clark et al., 5 N. B. R. 255; 5 Fed. Cas. 850.

Under the Act of 1841 a secured creditor who had proved his debt was allowed to withdraw his proof after notice to the bankrupt and assignee,

under the circumstances of the case. Ex parte Lapsley, 1 Penn. L. J. 245; 14 Fed. Cas. 835.

Creditors who had proved their claim and received a dividend from a bankrupt's estate were indebted to the bankrupt for a lesser amount. The trustees in bankruptcy having brought suit against them, they were allowed to withdraw the proof of the claim, repay the dividend received, and file a new proof as of a secured claim, secured by their debt to the bankrupt. In re Kaufman et al., 8 Ben. 394; 14 Fed. Cas. 153.

The laws of New Jersey gave the landlord a preference for one year's rent from the proceeds of personal property on the leased premises, and extended the same privilege to operatives in manufactories for one month's wages. The landlord, having proved his claim for rent as an unsecured crdeitor, in ignorance of his privilege, was allowed to amend his proof; and the court further held that section 28 of the Act of 1867 did not give to the classes of creditors enumerated any privilege over secured creditors. In re McConnell, 9 N. B. R. 387; 15 Fed. Cas. 1297.

When both the maker and indorser of a note become insolvent, the latter may recover the security given to the latter, and apply the same in payment of the note. Mathews v. Abbott, 2 Hask. 289; 16 Fed. Cas. 1004.

A creditor having a lien on the property of a third party to secure a debt due from the bankrupt, and who releases the lien for a consideration, must credit the amount of the consideration on his claim. Seay v. Wilson, 9 Fed. Rep. 589.

A judgment creditor levied upon the goods of a bankrupt before, and sold them after, the adjudication. Held, that he might prove any unpaid balance of the judgment debt against the estate in bankrupcy. In re Shirley, 9 Fed. Rep. 901.

A mortgagee of the bankrupt obtained leave of the court of bankruptcy to foreclose his mortgage in a state court, and the assignee was made a party. It was held that he could prove the deficiency as a claim against the bankrupt's estate. In re Letchworth, 18 Fed. Rep. 822.

A mortgagee of the bankrupt foreclosed the mortgage and the property was sold for less than his claim. He proved the balance against the mortgagor in bankruptcy proceedings. After the discharge of the latter in bankruptcy, he obtained a decree in the foreclosure proceedings for the deficiency. It was held that by proving his debt in bankruptcy, he waived his right to take judgment for the deficiency. Scott v. Ellery, 142 U. S. 381.

Held, under the Act of 1867, that where a mortgagee proved his debt in bankruptcy he became a general creditor only for the balance after deducting the value of the mortgaged property. Henry v. La Societe Francaise, 95 U. S. 58.

When a mortgagee, having obtained leave to foreclose in a state court, on condition of waiving his claim for any deficiency, for sufficient reasons fails to prosecute the foreclosure suit, he is not thereby precluded from being admitted as a creditor in the bankruptcy proceedings. In re Linforth, 87 Fed. Rep. 386 (1898).

The fact that a part of the property on which the lien exists is a homestead does not change the equity rule which requires a party having security on two funds to first exhaust his remedy on that in which he alone is secured. In re Sauthoff, 14 N. B. R. 364; 21 Fed. Cas. 540 (1875).

A creditor of a bankrupt having several securities for his debt may be required to exhaust the property on which he has an exclusive lien before proceeding against other securities which are shared by the other creditors. In re Sauthoff, 14 N. B. R. 364; 21 Fed. Cas. 540 (1876).

A secured creditor sold his security, which was supposed to have no value, for a considerable sum. The circuit court held that the district court had authority to confirm the sale, and to permit the proof of the balance of the debt. Bradley et al. v. Adams Express Co., 3 Fed. Rep. 895.

Where the proof of judgment debts showed that the creditor had not received "any manner of satisfaction or security whatsoever," and by the state law the judgment itself was a lien on real estate of the debtor, the fact that the claim was so proved did not amount to a surrender of such lien, since the proof of the judgments indicated the lien, the assignee having knowledge of the bankrupt's real property. Sedgwick v. Stewart, 9 Ben. 433; 21 Fed. Cas. 104 (1878).

The holder of indorsed notes of the bankrupt had granted an extension of two months for a valuable consideration. Held, that the indorser was not discharged; that the general rule of law did not apply to such a case, and that the remedy of the indorser was to prove his contingent liability against the estate of the bankrupt as authorized by the Act of 1841. Tiernan v. Woodruff, 5 McLean, 350; 23 Fed. Cas. 1206 (1852).

A creditor of a firm was secured by the pledge of property belonging to one of the members. It was held that he was bound to prove his whole debt against the firm assets, but could only prove the deficiency after realizing on the security against the separate assets of such partner. In re May et al., 17 N. B. R. 192; 16 Fed. Cas. 1208.

A mortgagee foreclosed two mortgages in a state court. The bankrupt and his wife and the assignee were made defendants. The assignee had notice of the sale, but the mortgagee had not obtained the leave of the court of bankruptcy. The mortgaged property did not realize the amount claimed, and the mortgagee was allowed to prove the deficiency against the estate. In re Moller et al., 8 Ben. 526; 17 Fed. Cas. 576; s. c., 14 Blatchf. 207; 17 Fed. Cas. 579.

The practice under the Act of 1867 was that a secured creditor should prove his debt as secured, and after selling the security by leave of the court, the balance, if any, would then be allowed as indebtedness of the creditor against the general estate. In re Morrison, 10 N. B. R. 105; 17 Fed. Cas. 831.

It was held to be a sufficient compliance with the provisions of section 19 of the Act of 1867 if a surety for the bankrupt paid the debt by giving his individual note, where the note was expressly accepted in payment. In re Morrell, 2 Saw. 356; 17 Fed. Cas. 781.

An assignee in bankruptcy cannot require a creditor to surrender a policy of insurance on the life of a bankrupt held as collateral security for a debt of such bankrupt. In re Newlin, 6 Ben. 342; 18 Fed. Cas. 91 (1873).

The creditor in such case on proving the debt against the bankrupt is chargeable with the surrender value of the policy. Ibid.

The wife of a bankrupt, her husband joining, had given a deed of trust on her property to secure a debt of her husband. Before the bankruptcy of the husband, the wife died leaving heirs. Held, that the claim could be proved against the estate as a secured debt and enforced against the property. In re Hartel, 7 N. B. R. 559; 11 Fed. Cas. 697.

If the bankrupt gives his creditor security from his own property, the creditor cannot prove his debt without surrendering his security. But if security from a third person be transferred to the creditor, he may prove his debt without surrendering his security, and may enforce it against such third person, provided he does not thereby receive more than his claim. In re Babcock, 3 Story, 393; 2 Fed. Cas. 289 (1844).

A warrant of attorney was given six months before the filing of a petition in bankruptcy, but the judgment was entered only four months before. It was held that the execution, levy and sale under the judgment were a transfer and disposal of the property by the debtor; that the execution creditor could not retain the proceeds of the sale, but might surrender them and then prove up his debt in the court of bankruptcy, and after paying costs, share in the dividends. Hood v. Karper, 5 N. B. R. 358; 12 Fed. Cas. 456.

A creditor can prove the full amount of his claim against the joint estate of a firm in bankruptcy without selling, surrendering, or valuing security given by one of the partners upon his separate property. When, however, one partner gives such security to sureties to indemnify them for his separate debt, the separate creditor must procure the security to be applied, and prove only the deficiency. In re Holbrook et al., 2 Low. 259; 12 Fed. Cas. 317.

A court in bankruptcy may order the sale of the bankrupt's property free and clear of all incumbrances, and in that case a secured creditor who has proved his claim will be paid out of the funds. Davis v. Anderson et al., 6 N. B. R. 145; 7 Fed. Cas. 103.

Where a mortgage given to secure a note inclosed by the bankrupt is not foreclosed, the holder can prove the debt without deducting the value of the mortgaged property. When, however, the mortgage has been foreclosed, the proof of the debt should be reduced by the amount of the proceeds. In re Cram, 1 Hask. 89; 6 Fed Cas. 738.

Where the fraud that vitiated a chattel mortgage given by the bankrupt was constructive, and the mortgagee delivered the property to the assignee in bankruptcy, as soon as the court found that the mortgage was void under the law, and before judgment was entered, he was allowed to prove his debt. Burr v. Hopkins, 6 Biss. 345; 4 Fed. Cas. 814.

Prior to the commencement of proceedings, the bankrupts had given a deed of certain property to a trustee to secure a creditor. After the filing

of the petition in bankruptcy the trustee surrendered the property without action. Held, that the secured creditor might prove his debt. In re Clarke et al., 2 Hughes, 405; 5 Fed. Cas. 939.

The bankrupt had given a mortgage to secure notes and indorsements given by the mortgagee for his accommodation. The security was insufficient. Held, that the holder of the paper, after sharing *pro rata* in the proceeds of the mortgaged property, could prove against the estate the balance of their respective claims. Ex parte Dalby, 1 Low. 431; 6 Fed. Cas. 116.

Where a mortgagee wishes leave to foreclose, he must prove his claim, and give due notice to an assignee of his application. In re Frizelle, 5 N. B. R. 122; 9 Fed. Cas. 965.

Answering the question who were secured creditors under the Act of 1867, Judge Gresham said: "The secured creditors to whom this exception applies are those who are secured by the pledge in some form of property that, apart from their lien upon it, would go into the fund for general distribution. The language is general, to be sure, and construed strictly, and without reference to other provisions of the statute, might be made to embrace those creditors who have personal security. But the law makes provisions elsewhere for the protection of such sureties, allowing them to prove in full when they have paid the debt, and providing for the subrogation to the rights of the creditor if he shall have proved, and they afterward pay the debt. * * * It follows, of course, that a creditor having personal security votes upon composition proceedings as an unsecured creditor." In re Spades et al., 6 Biss. 448; 22 Fed. Cas. 848.

After adjudication and the election of an assignee, a mortgagee of the bankrupt, without leave of the court, or notice to the assignee, sold the mortgaged premises, and then sought to make proof of the balance of his debt. The proof was rejected. In re Miller, 19 N. B. R. 78; 17 Fed. Cas. 297.

Some of the property sold by the assignee in bankruptcy was covered by a chattel mortgage, and it did not bring enough to pay the mortgage debt. It was held that the deficiency could not be paid out of the general funds of the estate. In re Purcell et al., 2 Ben. 485; 20 Fed. Cas. 59.

When a mortgagee of the bankrupts foreclosed, by leave of the court, he could not prove the deficiency as a claim against the estate except as provided in section 29 of the Act of 1867. In re Herrick, 7 N. B. R. 341; 12 Fed. Cas. 43.

Claimants Who Have Received Preferences.

Held, that a creditor whose preferences had been set aside for constructive fraud, but who was guilty of no actual fraud, was not debarred from proving his debt. In re Cadwell, 17 Fed. Rep. 693.

A creditor unlawfully preferred may surrender his preference and prove his claim before, but not after, a decree declaring such preference void. In re Graves, 9 Fed. Rep. 816.

Surrender of a fraudulent preference can only be made to the assignee; the preferred creditor, therefore, must be denied the right to vote for assignee. In re Parham, 17 N. B. R. 300; 18 Fed. Cas. 1094 (1878).

The payment of a judgment recovered by an assignee in bankruptcy for property transferred in violation of the Act did not authorize the creditor to prove his claim under section 23 of the Act of 1867. In re Richter's Estate, 1 Dill. 544; 20 Fed. Cas. 748.

A creditor who had received a preference from the bankrupt surrendered it to the assignee without suit. It was held under section 23 of the Act of 1867 that he could prove his debt. In re Montgomery, 3 Ben. 565; 17 Fed. Cas. 619.

The right of a preferred creditor to surrender the property and prove his debt continues until a recovery is had against him by judgment or decree, and is not barred by the commencement of a suit. In re Kipp, 4 N. B. R. 593; 14 Fed. Cas. 653.

Under the Act of 1867 a creditor who had received a fraudulent preference could only prove his debt by surrendering to the assignee any money or property that he received before he was sued for the same. In re Drummond, 4 Biss. 149; 7 Fed. Cas. 1110.

A creditor is concluded by the determination in bankruptcy, in a proceeding to which he was a party, that he had received a fraudulent preference and was disqualified to prove his debt under the Act of 1867, and cannot reopen the question for further examination. In re Leland et al., 14 Blatchf. 240; 15 Fed. Cas. 296.

An unsuccessful attempt to gain a preference was held not to bring a creditor within the penalties of the Act of 1867. In re Bonsfield & Poole M. Co., 16 N. B. R. 489; 3 Fed. Cas. 1013.

The levy upon the bankrupt's goods was set aside as a preference. Held, that the creditor was not thereby prevented from proving his debt against the bankrupt, and that an indorser of a bankrupt's note was not released from his liability on account of the levy being set aside. Streeter v. Jefferson Co. Bank, 147 U. S. 36.

A firm made an assignment to H. without preferences, but in fraud of the Bankrupt Act of 1867. H. accepted the trust. Proceedings in bankruptcy having been commenced against the firm that made the assignment, it was held that he could prove his claim against the firm. In re Horton, 5 Ben. 562; 12 Fed. Cas. 536.

Collection by a creditor of a draft of the bankrupt mailed (without intent to prefer) before, but received after, the proceedings in bankruptcy were known by the creditor to have commenced, does not compel the creditor to return the amount of the draft before making proof of debt under the Act of 1867. In re Baxter, 25 Fed. Rep. 700.

A creditor who receives a preference, having reason to believe that the debtor is insolvent, cannot prove his debt, and this is true notwithstanding he intended to prevent the waste of the bankrupt's effects, and secure their distribution among all the creditors *pro rata*. In re Walton et al., Deady, 598; 29 Fed. Cas. 128.

It appearing that a creditor who had obtained a judgment by confession against the bankrupt had knowledge of the latter's insolvency at the time, the court suspended the proof of his claim until after the election of an assignee. In re Walton et al., Deady, 442; 29 Fed. Cas. 125.

A preferred creditor who has made a full surrender of his preference before suit has been brought against him may prove his claim, but after the commencement of suit, and before recovery, it is discretionary with the court. After recovery, he cannot prove his claim. In re Stephens, 3 Biss. 187; 2 Fed. Cas. 1275.

Less than four months before the filing of their petition, the bankrupts had given a chattel mortgage, and subsequently the mortgaged property was sold and bid in by the mortgagees, and the proceeds applied upon their debts. The assignee in bankruptcy brought an action and recovered a judgment against them, which was paid in full. Held, that the payment of the judgment was not such a surrender of the preference as to enable the mortgagees to prove their claims against the bankrupts' estate. In re Tonkins et al., 4 N. B. R. 52; 24 Fed. Cas. 48.

The assignee had brought suit against certain creditors to recover a preference received by them. After proofs had been taken before a special examiner, they delivered to the assignee the amount received by them from the bankrupt, and paid the costs of the suit, which the assignee accepted. It was held that they could thereupon prove their debt. In re Riorden, 14 N. B. R. 332; 20 Fed. Cas. 820.

A party purchased property fraudulently conveyed by the bankrupt, and was compelled to surrender it, after a long litigation, to the assignee. The court held that he had no claim either for improvements upon the premises, or for the reduction of incumbrances. In re Mead, 19 N. B. R. 81; 16 Fed. Cas. 1277.

The court disallowed the proof of a claim where the claimants had taken a mortgage to secure it less than four months before the adjudication. Phelps v. Sterns, 4 N. B. R. 34; 19 Fed. Cas. 465.

Under the Act of 1867 a creditor who had secured a preference by chattel mortgage could not prove his debt upon relinquishing the mortgage. In re Princeton, 2 Biss. 116; 19 Fed. Cas. 1314.

The provision in section 39 of the Act of 1867 respecting cases in which creditors will not be allowed to prove their claims applied only to cases where the assignee was compelled to sue for the recovery of property illegally transferred, and not where the preferred creditor made a voluntary surrender. In re Reece et al., 2 Bond, 359; 19 Fed. Cas. 402.

An assignee in bankruptcy recovered a judgment against a preferred creditor for the value paid in such preference. The creditor, having paid such judgment, offered to prove the same against the bankrupt. The question being referred to the court, Blodgett, district judge, held that there being no actual fraud, and the preference being only constructively fraudulent, the creditor had the right to prove his claim. In re Newcomer, 18 Fed. Cas. 48.

The debt of the petitioning creditors had been merged into a judgment under circumstances amounting to a preference. It was held that being in judgment, it was not a provable debt, and the petition could not be sustained, but that the creditors might surrender their preference and then petition would be entertained. In re Hunt et al., 5 N. B. R. 433; 12 Fed. Cas. 900.

Certain creditors of the bankrupt held bonds secured by mortgage. Upon proceedings in bankruptcy being commenced, the trustees named in the mortgage surrendered possession of the property to the assignee, but without prejudice to the lien of the mortgage on the proceeds of the sale of the property. After the mortgage had been decided to be void as a fraudulent preference, certain bondholders applied for leave to surrender their bonds and prove their debts. Held, that it was too late for the creditors to surrender their preferences, and that under the Act of 1867 they could not prove their debts. In re Leland et al., 7 Ben. 156; 15 Fed. Cas. 280.

A creditor preferred as to certain debts should be allowed to prove other debts not preferred. In re Arnold, 2 N. B. R. 160; 1 Fed. Cas. 1063.

Under the Act of 1867 a creditor having two separate claims, on one of which he had received a preference, might nevertheless prove the other. In re Lee, 14 N. B. R. 89; 15 Fed. Cas. 135.

When a creditor has two or more claims against the bankrupt, and receives a preference on one only, he may prove the others; but this principle does not apply to a running account for merchandise. In re Richter's Estate, 1 Dill. 544; 20 Fed. Cas. 748.

Where a creditor's claim consists of disconnected debts, and he has received a preference as to all of them, he must surrender all that he has received before he can prove any portion of his debt. If the preference is only as to some of the debts, he may prove the others without surrender. In re Holland, 8 N. B. R. 190; 12 Fed. Cas. 337.

A creditor holding ten notes received payments under circumstances that amounted to a preference, and indorsed them on three notes. It was held, under the Act of 1867, that this prevented him from proving any of the notes. In re Kingsbury et al., 3 N. B. R. 317; 14 Fed. Cas. 582.

After the assignee has recovered property from a preferred creditor by proceedings for that purpose, the latter cannot prove his debt. In re Stein, 16 N. B. R. 569; 22 Fed. Cas. 1232.

The assignee in bankruptcy proceeded against a creditor who had received an unlawful preference, and secured a decree setting aside the conveyance. It was held, under the Act of 1867, that the creditor, having made himself a party to the fraud, could not prove his claim against the estate of the bankrupt. In re Cramer, 13 N. B. R. 225; 6 Fed. Cas. 742.

Under section 39 of the Act of 1867 (section 5021, R. S.), it was held that a creditor who obtained a fraudulent preference in the form of a chattel mortgage loses his lien, and cannot prove his claim in bankruptcy. In re Bingham v. Richmond, 6 N. B. R. 127; 3 Fed. Cas. 405.

Objections to Claims, Etc.

Objection to a claim must be in writing, and must specify, with reasonable certainty and brevity, the grounds relied upon. In re Walton et al., Deady, 442; 29 Fed. Cas. 125.

After the assignee and a creditor had separately applied to the circuit court for a review of an order allowing a claim, both of which petitions were dismissed, the assignee applied for a rehearing on the claim in the district court. The court denied the motion. In re Troy Woolen Co., 5 Ben. 413; 24 Fed. Cas. 241.

The assignee filed a bill for a re-examination of a claim of a creditor. The claimant having offered himself for examination, it was held to be the duty of the assignee to introduce such opposing evidence as he might have. In re Robinson, 8 Ben. 406; 20 Fed. Cas. 978.

Creditors may contest a judgment debt offered for proof in competition with their own and show that such judgment is void or voidable for fraud or irregularity. In the absence of such fraud or irregularity, the judgment debt will not be disallowed because of an excessive assessment of damages. Ex parte O'Neil, In re Fowler, 1 N. B. R. 677; 18 Fed. Cas. 714 (1867).

The assignee is the proper person to object to the proof of a claim, unless the court otherwise directs under peculiar circumstances. In re Randall et al., 1 Saw. 56; 20 Fed. Cas. 226.

An order of the district court rejecting a claim could not be reviewed except upon a compliance with sections 8 and 84 of the Act of 1867 and rule 26. In re Place et al., 8 Blatchf. 302; 9 id. 369; 19 Fed. Cas. 790-791.

A reference had been made to take proof of a claim. Before any evidence was taken, it appeared that the creditor had proved his claim before the register. The court vacated the order of reference, and left the parties to pay each his own costs and expenses. In re Baldwin, 6 Ben. 196; 2 Fed. Cas. 507.

The consent of the assignee was held not to be necessary to enable one creditor to oppose the claim of another, or to take the question to the circuit court for review, when his objection was overruled. In re Joseph, 2 Woods, 390; 13 Fed. Cas. 1124.

An assignee represents both the bankrupt and his creditors, and has a stronger right than the former inasmuch as he can contest claims that the bankrupt could not contest. In re Gerney, 7 Biss. 414; 11 Fed. Cas. 121.

An attorney who has acted as counsel for the bankrupt is not excluded from appearing as counsel for a creditor whose claim is under re-examination. In re Morgan, 8 Ben. 232; 17 Fed. Cas. 746.

Where the creditor of a corporation had proved his claim in bankruptcy and received a dividend, it was held that he did not thereby waive his right of action for the balance of his claim. New Lamp Chimney Co. v. Ansonia B. & C. Co., 91 U. S. 656.

It is competent for the bankrupt himself to move for the expunging of the proof of a debt. In re McDonald, 14 N. B. R. 477; 16 Fed. Cas. 36.

It was held, under the Act of 1867, that in a proper case the district court would expunge the proof of a debt for causes that had arisen after the proof was made. In re Loring, Holmes, 483; 15 Fed Cas. 895.

One year after the debtor had been decreed a bankrupt, and four months after a dividend had been declared, a motion was made to expunge the proof of a claim for the reason that it was barred by the statute of limitations. The court said that as the matter was within his discretion, and as the validity of the claim was not denied, he would not allow the motion. In re Alden, 1 Fed. Cas. 327 (1844).

After the proof of a claim founded upon a judgment, the judgment was set aside by the court in which it was entered. The court of bankruptcy thereupon ordered the proof to be expunged. In re Bruce, 6 Ben. 515; 4 Fed. Cas. 466.

An order expunging the proof of a claim is not an adjudication that will bar the creditor from pleading it as a set-off in an action brought against him by the assignee. Catlin v. Foster, 1 Saw. 37; 5 Fed. Cas. 303.

Under the Act of 1867 (section 5081, R. S.) a claim in bankruptcy could be re-examined and expunged upon the application of the bankrupt, although no provision was made therefor under the bankruptcy rules. In re Pease, 29 Fed. Rep. 593.

A bankrupt is not concluded from applying to expunge a claim, proven as an open account, because he included it in his schedule as a claim evidenced by vote. Ibid.

The acquiescence of the debtor in the sale of pledged stock will bind his assignee in bankruptcy without respect to the price realized, if made before the commencement of proceedings; but not otherwise. Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; 22 Fed. Cas. 860.

A mortgagee who purchased the mortgaged premises on a sale by the assignee was charged with the costs and expenses of the sale, notwithstanding he had offered to take the mortgaged property in satisfaction of his debt, which the assignee in bankruptcy refused to consent to, and the property was finally sold for less than the amount due. In re Ellerhorst et al., 2 Saw. 219; 8 Fed. Cas. 520.

The failure of an assignee to object to a suit for the foreclosure of a mortgage, which was pending at the time of the filing of the petition, signifies his assent to that method of ascertaining the value of the property subject to the mortgage, and he cannot object to a proof of deficiency after the sale. In re Stansfield, 4 Saw. 334; 22 Fed. Cas. 1061.

It is not necessary that a power of attorney authorizing a person to appear for a creditor in bankruptcy proceedings should be acknowledged. In re Powell, 2 N. B. R. 45; 19 Fed. Cas. 1211.

Where a claimant causes delay and expense by misleading the assignee in the proof of his debt, he will not be allowed costs. In re De Metz, 7 Fed. Cas. 451.

The assignee's solicitor was held to be competent to act as attorney for creditors in bankruptcy proceedings under the Act of 1867 after the twenty-seventh rule had been vacated. In re Levy et al., 1 N. B. R. 184; 15 Fed. Cas. 433.

NOTICES.

§ 58. **Notices to Creditors.**— (a.) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of

(1.) All examinations of the bankrupt;

(2.) All hearings upon applications for the confirmation of compositions or the discharge of bankrupts;

(3.) All meetings of creditors;

(4.) All proposed sales of property;

(5.) The declaration and time of payment of dividends;

(6.) The filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon;

(7.) The proposed compromise of any controversy, and

(8.) The proposed dismissal of the proceedings.

(b.) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

(c.) All notices shall be given by the referee, unless otherwise ordered by the judge.

Where the name of the bankrupt was Wm. D. Hill and the notice to creditors read "Wm. B. Hill" the variance was held not to be material. In re Hill, 1 Ben. 321; 12 Fed. Cas. 144.

A notice to creditors addressed "Levley, N. Y.," was not a notice to Lawrence J. Levley who resided in that city. In re Archenbrown, 11 N. B. R. 149; 1 Fed. Cas. 1084.

When the notice of a meeting of creditors is addressed to a creditor by the wrong name, he is not bound by the proceedings of such meeting. Anon., 1 N. B. R. 122; 1 Fed. Cas. 1012.

A sale of incumbered property without notice to the lien creditors was held to be void under the Act of 1867. Ex parte Drewry, 2 Hughes, 435; 7 Fed. Cas. 1074.

The publication of a notice to creditors under rules 5 and 21 in pursuance of the Act of 1867 is considered in the case cited. In re Robinson, 1 Ben. 270; 20 Fed. Cas. 973.

Where a notice of a meeting of creditors was duly published and mailed, the regularity of the proceedings is not affected by the failure of a creditor to receive it. In re Stetson, 4 Ben. 147; 22 Fed. Cas. 1316.

Where creditors failed to receive their notice in time to attend, and their presence might have changed the result of the vote, the meeting may be reopened upon a prompt application. In re Spencer, 18 N. B. R. 190; 22 Fed. Cas. 914.

Where schedules are amended by the addition of the names of new creditors, a new warrant should issue to be served on such creditors, and they should receive notice containing the names of all the creditors. In re Perry, 1 N. B. R. 220; 19 Fed. Cas. 263.

The court of bankruptcy will set aside an order made without notice approving a schedule of exempt property, or confirming a report of sales, made on the day that the same were filed. In re Peabody, 16 N. B. R. 243; 19 Fed. Cas. 35.

Under section 27 of the Act of 1867, notice of the second meeting of creditors was required to be sent to the creditors without respect to whether they had proved their debts. Thereupon the whole fund in the hands of the assignee could be distributed, in the absence of sufficient objections to such action. In re Mills, 7 Ben. 452; 17 Fed. Cas. 393.

If there are no assets, and no debts have been proved when the bankrupt applies for his discharge, the assignee must nevertheless give notice. Anon., 1 N. B. R. 122; 1 Fed. Cas. 1012.

Held, under section 17 of the amendment of 1874, that upon an application to set aside a composition, notice should be given to all creditors as well as the debtor. Ex parte Hamlin, 2 Low. 571; 11 Fed. Cas. 367.

The proof of a debt had been lost. It was held that the creditor was nevertheless entitled to a notice of the application for a discharge, and that the discharge must be refused until the proof is supplied and the notice given. In re Freidlob, 19 N. B. R. 122; 9 Fed. Cas. 817.

The marshal's return of service of notice to creditors is not conclusive, nor is the register's certificate as to the correctness of the inventory. In re Hill, 1 Ben. 321; 12 Fed. Cas. 144.

The return of the marshal to the warrant certified that he had "sent written or printed notices to the creditors named on the schedules, and herewith returned, which schedules were made up by him on the best information he could obtain in respect thereto, after diligent search." Held sufficient. In re Adams, 5 Ben. 544; 1 Fed. Cas. 82.

The certificate of the clerk of the court that the copies of a notice "were duly mailed to each creditor" was held to be sufficient evidence of the fact stated. In re Townsend, 2 Ben. 62; 24 Fed. Cas. 102.

A failure to publish the notice of a meeting of creditors in one of the designated papers, and an omission in the warrants of the names, residences and amounts of the debts of creditors, was held to be sufficient ground for setting aside the proceedings. In re Hall, 2 N. B. R. 192; 11 Fed. Cas. 201.

In the absence of fraud, all parties are chargeable with notice of the proceedings in bankruptcy. Barron v. Newberry, 1 Biss. 149; 2 Fed. Cas. 937.

The supreme court held, under the circumstances of the case, that notice

of proceedings in composition was notice of the original proceeding. Liebke v. Thomas, 116 U. S. 605.

The policy-holders of a life insurance company were, by its charter, entitled to vote for trustees, and to share in the profits. Proceedings in bankruptcy were set aside because the policyholders were not notified of the meeting of creditors. In re Atlantic M. L. I. Co., 9 Ben. 270; 2 Fed. Cas. 168.

PETITIONS.

§ 59. **Who may File and Dismiss Petitions.**— (a.) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b.) Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c.) Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

(d.) If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e.) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

(f.) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

(g.) A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

The statement in a petition that there was due to the petitioners the sum of $500 and upward was held to be sufficient under the Act of 1841. Ex parte Shouse, Crabbe, 482; 22 Fed. Cas. 27 (1842).

The petitioning creditor was the purchaser of a note which had been delivered by the debtors to the payee after it was due, and after the alleged acts of bankruptcy. It was held to be sufficient to support the petition. Ibid.

Where the petition sets forth the nature of the petitioner's debt, and avers that it is provable, the question then becomes one of law, and not of fact. Sigsby v. Willis, 3 Ben. 371; 22 Fed. Cas. 112.

An equitable demand was held to be sufficient to support a petition in involuntary bankrutcy under the Act of 1867. Ibid.

Two of the petitioning creditors were indorsers of notes given by the bankrupt. It was held that they were not creditors at the time of the filing of the petition, notwithstanding the notes had been dishonored, inasmuch as the holders had the first right to prove. In re Riker, 18 N. B. R. 393; 20 Fed. Cas. 795.

One of the petitioning creditors on a petition filed on the 19th of July declared on a note for $250 which fell due on the 23d of July. The court held that it was not a claim for $250, but for that sum less a rebate of four days' interest. Ibid.

Where the original petition is void for want of proper petitioners, it cannot be sustained by intervening petitions. Robinson et al. v. Hanway, 19 N. B. R. 289; 20 Fed. Cas. 1012.

Where the petitioning creditor was a bank, it was held that the president must have special authority to sign and verify the petition. Roche et al. v. Fox, 16 N. B. R. 461; 20 Fed. Cas. 1065.

A private bank, which was a partnership, was held to be incompetent to maintain a petition in involuntary proceedings against one of the members of the firm. Robinson et al. v. Hanway, 19 N. B. R. 289; 20 Fed. Cas. 1012.

The prosecution of an action by a creditor for the recovery of his debt is not a bar as to proceedings against the debtor in bankruptcy. In re Henderson, 9 Fed. Rep. 196.

Where an indorser's liability becomes fixed, such liability constitutes a debt due and payable from the indorser, which may be made the foundation of involuntary, as well as voluntary, proceedings. In re Nickodemus 2 Chi. Leg. News, 49; 18 Fed. Cas. 222.

A petition in bankruptcy may be supported by a debt secured in whole or in part. In re Stansell, 6 N. B. R. 183; 22 Fed. Cas. 1059.

A creditor whose debt is not yet due may maintain thereon a petition in bankruptcy. In re Oulmette, 3 N. B. R. 566; 18 Fed. Cas. 913 (1870).

A debtor had made an assignment for the benefit of his creditors, and certain creditors had agreed to assent if he would change the assignee. Held, that they were not estopped from filing a petition in involuntary bankruptcy. Spicer et al. v. Ward et al., 3 N. B. R. 512; 22 Fed. Cas. 931.

It is not illegal for a debtor to solicit creditors to sign a petition for proceedings against him in involuntary bankruptcy. In re Bouton, 5 Saw. 427; 3 Fed. Cas. 1019.

A petition by a creditor in involuntary proceedings who has previously secured his claim by attachment will not be sustained. In re Hazenes, 4 Dill. 549; 11 Fed. Cas. 941.

A creditor whose claim is provable under the Act can file a petition in involuntary bankruptcy, notwithstanding his claim is not due. Linn et al. v. Smith, 4 N. B. R. 46; 15 Fed. Cas. 563.

The holder of a note not yet due may file a petition in involuntary bankruptcy. In re Alexander, 1 Low. 470; 1 Fed. Cas. 351.

The fact that the petitioner was the only creditor of the alleged bankrupt is no reason for the dismissal of the petition. Ibid..

Under the Act of 1867 it was held that a secured creditor might file a petition if his security fell short by $250 or more of the amount of his claim. Ibid.

When the bankrupt has counterclaims against the petitioning creditor in excess of such creditor's claim, the petition will be dismissed. In re Osage Valley v. S. K. R. Co., 9 N. B. R. 281; 18 Fed. Cas. 841.

A petitioner in involuntary bankruptcy set up a preference to himself as the act of bankruptcy on which an adjudication was asked. The court held that he could not maintain the proceedings without surrendering the preference. In re Rado, 6 Biss. 230; 20 Fed. Cas. 153.

The petitioning creditors had signed an agreement to give the debtors an extension, which was conditional on its receiving the signatures of all the creditors. Subsequently, other creditors attached the property of the debtors. It was held that the petitioning creditors were qualified to file a petition in involuntary proceedings. Ex parte Potts et al., Crabbe, 469; 19 Fed. Cas. 1199 (1842).

As a general rule, the oath of the petitioning creditor is accepted as sufficient proof of his right to institute proceedings; but it may be overcome by evidence disproving his claim. Ex parte Foster, 5 Law Rep. 406; 9 Fed. Cas. 507 (1842).

The debt of the petitioning creditor will not be inquired into as long as the adjudication of bankruptcy stands unrevoked. In re Fallon, 2 N. B. R. 277; 8 Fed. Cas. 977.

One petition by a bankrupt does not bar a second petition where it appears that the second is based upon debts contracted subsequently to the time when the proceedings under the first were closed. In re Drisco, 14 N. B. R. 541; 2 Low. 430; 7 Fed. Cas. 1092, 1104.

A petitioner in voluntary proceedings could not proceed *in forma pauperis* under the Act of 1841, but was bound to pay the expenses incident to the prosecution of his petition. In re Greaves, 5 Law Rep. 25; 10 Fed. Cas. 1067 (1842).

A petition was dismissed under the Act of 1841 because the petitioner owed debts that had been contracted in a fiduciary capacity, notwithstanding he owed other debts not so contracted. In re Cease, 5 Law Rep. 408; 5 Fed. Cas. 388 (1842).

Under the Act of 1841, the court allowed a voluntary petition to be filed after the filing of a petition in involuntary bankruptcy. In re Canfield, 5 Law Rep. 415; 5 Fed. Cas. 8 (1843).

A debtor had made an assignment under the insolvent law of his state, and a creditor had thereafter applied to have the bond of the assignee increased. Held, that this did not estop him from filing a petition in bankruptcy based on the assignment. Perry v. Langley, 1 N. B. R. 599; 19 Fed. Cas. 280.

When the claim of the petitioning creditor is barred by the statute of limitations of the domicile, the petition will be dismissed. In re Cornwall, 9 Blatchf. 114; 6 Fed. Cas. 586.

A note was given without consideration, and lost while in the possession of the promisee, and thereupon another note was given to replace it. Held, that it was not a sufficient claim to entitle the holder to commence proceedings in bankruptcy against the maker. In re Cornwall, 4 N. B. R. 400; 6 Fed. Cas. 595.

A contract between the petitioners and the alleged bankrupt was such that the former was to buy cotton for future delivery, and settle, not by the delivery of the cotton, but by paying or receiving the difference in price. Held, that a note given by the bankrupt to pay losses incurred on such a contract was valid, and would support a petition in involuntary bankruptcy. Lehman et al. v. Strassberger, 2 Woods, 554; 15 Fed. Cas. 254.

It was held to be sufficient, under the Act of 1867, that the debt of the petitioning creditor existed when the alleged act of bankruptcy was committed, although it was not then due. The court further expressed the opinion that the law should be construed against the right of a creditor to maintain a petition who had become a creditor after the commission of the alleged act of bankruptcy. In re Muller et al., Deady, 513; 17 Fed. Cas. 971.

The court refused an application of a petitioner in involuntary bankruptcy to file an amended petition, setting forth a note indorsed by the bankrupt which had not matured when the original petition was filed. In re Morse, 17 Blatchf. 72; 17 Fed. Cas. 846.

Petitions in bankruptcy proceedings are treated as the joint act of all the petitioners, and those who had no actual knowledge of any falsehood which they contained are responsible until their innocence clearly appears. In re Keller et al., 18 N. B. R. 10; 14 Fed. Cas. 210.

One creditor was induced by the fraudulent representations of another to release his debt, and in consequence of such a release the latter secured a preference. Held, that the former was not disqualified by the release, under the circumstances, from filing a petition against the debtor. Michaels v. Post, 21 Wall. 398.

A creditor could file a petition in involuntary bankruptcy under the Act of 1841 upon a debt not yet due, but which was certain and liquidated. In re King, 1 N. Y. Leg. Obs. 276; 14 Fed. Cas. 509.

The petitioning creditor was a city, and it had received part of its claim from sureties on the bond of the bankrupt. The petition was entertained, and an adjudication had, after the city had paid into the registry of the court the money so received. In re Marcer, 6 N. B. R. 351; 16 Fed. Cas. 699.

Under the laws of Michigan a suit will not be maintained in the state courts for a debt on account of sales of intoxicating liquor. A bankrupt against whom adjudication had been entered by default, moved to set aside his default on the ground that the claim of the petitioning creditor was of the character mentioned. The motion was disallowed. In re Neilson, 7 N. B. R. 505; 17 Fed. Cas. 1301.

The by-laws of a corporation authorized the stockholders present at any meeting to elect a director to cast the votes of absentees. A resolution that the corporation go into bankruptcy was adopted by such a vote, only a small number of stockholders being present. Eight months afterward, a stockholder, who was also a director, and against whom a suit for negligence in the latter capacity had been commenced, and who was not present at the meeting, filed a petition for the dismissal of the proceedings. The petition was denied. In re Collateral L. & S. Bank, 5 Saw. 331; 6 Fed. Cas. 100.

A petition that failed to state that the petitioner constituted one-fourth of the number of creditors, and that his debts amounted to one-third of the debts provable, was not cured by a paper filed at the same time, signed by the debtor, admitting that the required number and amount of his creditors had joined in the petition, and consenting that the proceedings be had. In re Keeler, 10 N. B. R. 419; 14 Fed. Cas. 176.

A petition in involuntary bankruptcy should describe the petitioners' debts so far as to enable the court to determine whether they are provable. When a preference is alleged as an act of bankruptcy, the name of the person preferred should be given. It need not be stated that it was in fraud of the Bankrupt Act. In re Hadley, 12 N. B. R. 366; 11 Fed. Cas. 148.

It was held to be sufficient under the amendment of 1874 for a petition in involuntary bankruptcy to state upon belief that the required number of creditors had signed. In re Mann, 13 Blatchf. 401; 16 Fed. Cas. 634.

Partnership debts should be considered on a petition against the individual bankrupt in determining whether the required number of creditors have signed. In re Price, 3 Dill. 514, n.; 19 Fed. Cas. 1312.

In determining whether the required number of creditors had joined in a petition in involuntary bankruptcy, it was held, under the Act of 1867, that a creditor who had once joined could not withdraw. In re Philadelphia Axle Works, 19 Fed. Cas. 494.

Held, under the Act of 1867, that debts less than $250 are to be taken into account in determining whether the required number of creditors had

united in a petition in involuntary bankruptcy. In re McAdam, 4 Saw. 119; 15 Fed. Cas. 1201.

Where the petition contains an averment that the number and amount of creditors signing are sufficient, the fact cannot be re-examined after adjudication, unless fraud is alleged, either by the court of bankruptcy, or in any collateral proceeding. In re Duncan et al., 8 Ben. 365; 8 Fed. Cas. 1.

The question being whether the required number and amount of creditors had joined in the petition, the court held that a creditor who was amply secured, and did not waive his security, should not be considered in the computation. In re Crossette, 17 N. B. R. 208; 6 Fed. Cas. 894.

Creditors claiming liens, or having security, could not be taken into account in determining whether the required number had joined in the petition under the Act of 1867 as amended in 1874. In re Frost, 6 Biss. 213; 9 Fed. Cas. 965.

After an adjudication in involuntary bankruptcy had been made by default, the bankrupts asked that the default be opened, and that they be allowed to answer on the ground that the required number of petitioners had not signed. Upon a reference, this allegation was found to be untrue, and the motion to set aside the proceedings was denied. In re Le Favour, 8 Ben. 43; 15 Fed. Cas. 244.

In determining whether the required number of petitioners had united in a petition against a separate partner, creditors of the firm must be included in the computation. In re Lloyd, 15 N. B. R. 257; 15 Fed. Cas. 711.

Justice Bradley held that the Act of 1867 did not require that in an adjudication the court should pass formally upon the question whether the required number and amount of creditors had united in a petition. Lastrapes et al. v. Blanc et al., 3 Woods, 134; 14 Fed. Cas. 1164.

Creditors having security are not to be considered in determining whether a sufficient number have signed an involuntary petition. In re Green Pond R. Co., 13 N. B. R. 118; 10 Fed. Cas. 1178.

An adjudication in bankruptcy is a judgment that the required number and amount of creditors have joined in the petition, and the question will not be reopened unless fraud or imposition is shown. In re Funkenstein, 3 Saw. 605; 9 Fed. Cas. 1005.

In determining whether the petitioners are sufficient in number and amount, attaching creditors cannot be taken into account. In re Jewett, 7 Biss. 242; 13 Fed. Cas. 584.

In proceedings of involuntary bankruptcy an allegation in the petition that the required number of creditors have signed is not jurisdictional, and may be amended during proceedings for a composition. Ex parte Jewett, 2 Low. 393; 13 Fed. Cas. 580.

Creditors who have been fraudulently preferred are not to be counted in determining whether a sufficient number had joined in a petition. In re Israel, 3 Dill. 511; 13 Fed. Cas. 175.

Under the amendment of 1874, a denial that a sufficient number of cred-

itors had joined in the petition should be verified by the oath of the alleged bankrupt. The question should then be determined by a reference, and the affirmative of the allegation is with the petitioning creditor. The debtor must attend and submit to an examination if desired by the creditors. In re Hines, 7 Ben. 427; 12 Fed. Cas. 1136.

For the purpose of determining whether the required number of petitioners have signed, and whether secured creditors have provable debts, the court may inquire into the value of securities in the hands of creditors. In re California P. R. Co., 3 Saw. 240; 4 Fed. Cas. 1061.

A suggestion that a sufficient number of creditors have not joined in a petition of involuntary bankruptcy will be entertained though it comes from a creditor who is charged with having received a fraudulent preference. Clinton et al. v. Mayo, 12 N. B. R. 39; 5 Fed. Cas. 1057.

In determining the sufficiency of the signers to a petition, secured debts and debts barred by the statute of limitations should not be included. In the case of debts partly secured, the amount of the security must be deducted, and so with the offsets. In re Bouton, 5 Saw. 427; 3 Fed. Cas. 1019.

The claim of a creditor who has received a fraudulent preference will be left out of the computation in determining whether the required number of creditors had joined in the petition. Clinton et al. v. Mayo, 12 N. B. R. 39; 5 Fed. Cas. 1057.

Where a question arises whether a sufficiency of creditors have joined in the petition, the better practice is to refer the matter to a register or United States commissioner to examine the proofs and to report thereon. In re Sargent, 13 N. B. R. 144; 21 Fed. Cas. 495 (1875).

The petition in bankruptcy must affirmatively show that the requisite number of creditors in number and amount have united therein. The bankrupt law is a stringent provision for taking a man's business for his creditors. If creditors wish to do this, they must do it on the terms of the bankrupt law. In re Scammon, 6 Chi. Leg. News, 328; 21 Fed. Cas. 617 (1874); 6 Biss. 145; 21 Fed. Cas. 620 (1874); id. 622 (1874).

Attaching creditors were held to be on the same footing with other secured or preferred creditors, and not entitled to participate in the proceedings until an assignee is elected, nor to be included in the computation of the number and amount required to be represented in the petition. In re Scrafford, 4 Dill. 376; 21 Fed. Cas. 866 (1877).

It is strictly a jurisdictional question whether the required number of creditors have joined in the petition. In re Henderson, 9 Fed. Rep. 196.

It is made the duty of the court to investigate and find whether a sufficient number of creditors have joined. An allegation in the petition that such is the case, though admitted by the debtor, is not sufficient. In re Scammon, 6 Chi. Leg. News, 328; 21 Fed. Cas. 617 (1874); 6 Biss. 145; 21 Fed. Cas. 620 (1874); id. 622 (1874).

When the petitioners fail to prosecute proceedings in involuntary bankruptcy, any other creditors may intervene and conduct them to a conclusion, though an application for leave to dismiss is pending. In re Buchanan, 10 N. B. R. 97; 4 Fed. Cas. 527.

After filing a petition in involuntary bankruptcy against a debtor, the petitioning creditors made a settlement with him. On the day fixed for the hearing, other creditors were thereupon allowed to appear and proceed with the case. Ex parte Calendar, 5 Law Rep. 125; 4 Fed. Cas. 1044 (1843).

The court held that in determining whether a petition represents the necessary amount of indebtedness to the petitioning creditor, the interest might be added to the principal. Sloan v. Lewis, 22 Wall. 150.

After adjudication, the bankrupt and a creditor filed separate petitions that the proceedings be set aside on the ground that the required number and amount of creditors had not joined in the original petition. It was held that the judgment entered on the return day that the required number had signed was final in the absence of fraud or collusion. In re McKinley, 7 Ben. 562; 16 Fed. Cas. 218.

There should be an allegation in a petition in involuntary bankruptcy that the petitioners believe that they constitute the required number of creditors. If the required number have not in fact joined, owing to the refusal of the bankrupt to make a statement of his accounts upon demand, and a sufficient number join later, the proceedings will not be set aside. Perrin & Gaff M. Co. et al. v. Peale, 17 N. B. R. 377; 19 Fed. Cas. 230.

A creditor who held a lien by attachment which would be avoided by the adjudication, filed a petition asking leave to defend, and alleging, among other things, that the required number of creditors had not joined. It was ordered that the alleged bankrupt be required to file a list of creditors. Anon., 11 Chi. Leg. News, 190; 1 Fed. Cas. 995.

A corporation could be adjudged a bankrupt under section 5122, R. S. Section 12 of the Act of 1874, as to the number of creditors joining in petition, was held not to apply to proceedings against corporations. In re Oregon Bulletin, Printing & Pub. Co., 13 N. B. R. 199; 8 Chi. Leg. News, 81; 18 Fed. Cas. 770 (1875).

The district court having determined that the claim of the petitioning creditor equals the required amount, such determination is conclusive that a debt of that amount is due against a collateral attack. Sloan v. Lewis, 22 Wall. 150.

Individual, as well as firm creditors, should be taken into account in determining whether the required number had joined in a petition. In re Matot et al., 16 N. B. R. 485; 16 Fed. Cas. 1109.

The court of bankruptcy can only secure jurisdiction of the bankrupt and his estate by a petition clearly showing that the required number and amount of creditors have united, and a defect in this respect cannot be cured by amendment. In re Rosenfields, 11 N. B. R. 86; 20 Fed. Cas. 1209.

A creditor who had a lien on a bankrupt's property by attachment bought the claim of the petitioning creditor in bankruptcy, and obtained an order from the court dismissing the proceedings upon the payment of costs. Before the costs were paid, another creditor asked to be substituted for the petitioning creditor, and to have the dismissal vacated.

The district court so ordered, and the circuit court on appeal approved of its action. In re Lacey et al., 12 Blatchf. 322; 14 Fed. Cas. 906.

The petitioner settled his claim against the debtor, and before the return day of the order to show cause, moved to dismiss the proceedings. Another creditor thereupon appeared, and, alleging that the charges set up in the original petition were true, asked that the motion be denied and that the case proceed. The prayer was granted, and the motion to dismiss was denied. In re Mendenhall, 9 N. B. R. 380; 16 Fed. Cas. 9.

A voluntary bankrupt offered a composition of 30 per cent. It was accepted, and a majority of his creditors in number and amount joined in a petition that the proceedings be discontinued, and the property restored to him to enable him to carry out the terms of the arrangement. The court held that it would be necessary that there should be a hearing after notice to all the creditors before a discontinuance could be granted, and also that it could not be granted until the terms of the composition had been carried out. *Obiter*, the court expressed the view that in involuntary proceedings there could be a discontinuance before adjudication without the assent of any of the creditors except the petitioners, and without notice to other creditors. In re McKeon, 7 Ben. 513; 16 Fed. Cas. 207.

Proceedings in involuntary bankruptcy cannot be discontinued without an order of the court in pursuance of a special application. In re Buchanan, 10 N. B. R. 97; 4 Fed. Cas. 527.

Judge Blodgett, of the district of Illinois, held that creditors who had joined in an involuntary petition could not be allowed to withdraw. In re Heffron, 6 Biss. 156; 11 Fed. Cas. 1020.

In the absence of good cause shown, the court will not permit a voluntary petition to be withdrawn against the opposition of creditors. Ex parte Harris, 3 N. Y. Leg. Obs. 152; 11 Fed. Cas. 606 (1845).

Under the Act of 1841 it was held that a voluntary petition might be withdrawn before adjudication on a proper showing. Ex parte Randall et al., 5 Law Rep. 115; 20 Fed. Cas. 221 (1842).

The bankrupt, the petitioning creditor, and all the creditors who had proved their debts, with an insignificant exception, petitioned for the dismissal of the proceedings before the election of an assignee. The court ordered that the proceedings be dismissed, and that the messenger deliver the property to the bankrupt upon the payment of costs. In re Miller, 1 N. B. R. 410; 17 Fed. Cas. 295.

While one who has voluntarily joined in the petition in involuntary bankruptcy cannot subsequently withdraw, this is not true of one whose name has been used without his consent. In re Rosenfields, 11 N. B. R. 86; 20 Fed. Cas. 1209.

Where creditors in good faith join in a petition in bankruptcy, they cannot afterward withdraw, leaving a less number than is required to give the court jurisdiction. But where assent to join in the petition is obtained by misrepresentation or misunderstanding on the part of the creditor, he may be allowed by the court to withdraw at any time before adjudication. In re Sargent, 13 N. B. R. 144; 21 Fed. Cas. 495 (1875).

A bankrupt who obtains the signatures of creditors to a false and fraudulent petition in involuntary bankruptcy against himself is in contempt of court, and the proceedings will be stayed until he has purged himself of the contempt. In re Lalor, 19 N. B. R. 353; 14 Fed. Cas. 962.

A member of a former partnership will not be heard on the ground of a contingent debt against another partner, or by reason of an indebtedness for assets and money of said copartnership growing out of unsettled transactions. Sigsby v. Willis, 3 Ben. 371; 22 Fed. Cas. 112.

The stockholders of a company voted to give one of their number a mortgage to secure advances. Another stockholder, who was present and made no objection to the proceedings, subsequently filed a petition and set up the mortgage as an act of bankruptcy. It was held that he was estopped. In re Mass. Brick Co., 2 Low. 58; 16 Fed. Cas. 1067.

After adjudication and the election of an assignee, a creditor moved to set aside the proceedings for the reason that previous to the filing of the petition he had filed a petition in another district. The motion was denied on the ground that the creditors should not be required to try the question of bankruptcy again. In re Harris et al., 6 Ben. 375; 11 Fed. Cas. 611.

A petition in involuntary bankruptcy is for the benefit of all the creditors, and may be prosecuted by anyone of them who comes in in a reasonable time; but where proceedings had been discontinued on account of a voluntary assignment for the benefit of creditors, and, seventeen months afterward, creditors applied to have the proceedings reopened, this was held not to be a reasonable time. Ex parte Freedley et al., Crabbe, 544; 9 Fed. Cas. 744 (1844).

An officer of a corporation had filed a petition in voluntary bankruptcy in its name. Four years afterward, one of the corporators filed a petition praying that the proceedings be dismissed on the ground that it was never authorized by the stockholders as required by law. The court held that after so long an interval it was a conclusive presumption that the petition was authorized. In re Jefferson Ins. Co., 2 Hughes, 255; 13 Fed. Cas. 432.

Judge Hammond held that under the Law of 1867 creditors have a quasi-ministerial and quasi-judicial function to perform under some circumstances. In re Sauls, 5 Fed. Rep. 715.

A general denial of bankruptcy is sufficient to admit evidence of payments made by the alleged bankrupt to the petitioning creditors. In re Skelly, 3 Biss. 260; 22 Fed. Cas. 272.

One of several petitioners asked leave to withdraw on the ground that he had been induced to unite by misrepresentation on the part of other petitioners. The court refused to allow him to withdraw. In re Vogel et al., 9 Ben. 498; 28 Fed. Cas. 1238.

PREFERENCES.

§ 60. **Preferred Creditors.**— (a.) A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or

made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

(b.) If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

(c.) If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d.) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

Procuring or Suffering Judgments.

A levy suffered by a debtor, insolvent or contemplating insolvency, is a preference, and conclusive evidence of his intention to give a preference. In re Dibblee et al., 3 Ben. 283; 7 Fed. Cas. 651.

The execution of a warrant of attorney to an indorser, which gives him priority over other creditors, was held to be a voluntary act, as the indorser was powerless to coerce the debtor. Stewart et al. v. Loomis, 23 Fed. Cas. 66.

Under the Act of 1841 it was held that a default in a case where an attachment was made prior to the commencement of proceedings in bankruptcy was not an unlawful preference. In re Rowell, 2 N. Y. Leg. Obs. 285; 20 Fed. Cas. 1288.

In an involuntary proceeding, it rests upon the petitioning creditor to show that the alleged bankrupt suffered his property to be taken on legal process with intent to give a preference. In re King, 10 N. B. R. 104; 14 Fed. Cas. 506.

Where the bankrupt's property was seized and sold under a judgment by confession in a state court, or otherwise disposed of under circumstances amounting to a fraudulent preference, the assignee in bankruptcy can recover the proceeds by a bill in equity. Traders' Bank v. Campbell, 14 Wall. 87; Clarion Bank v. Jones, 21 id. 325.

A warrant of attorney given by an insolvent firm is a preference notwithstanding it was given under threats of legal process made by the creditor. Campbell v. Traders' N. Bank, 2 Biss. 423; 4 Fed. Cas. 1192.

Proceedings by a creditor to secure a judgment that will in operation give a preference, and an omission of the debtor to protect other creditors by proceedings under the Bankrupt Act, amount to a fraud upon the law. Buchanan v. Smith, 16 Wall. 277.

Judge Emmons held that notwithstanding the warrant of attorney was dated more than six months before the filing of the petition in bankruptcy, the entering of judgment and levying of execution in pursuance of such warrant, with the debtor's sufferance and permission, was a fraud upon the act. Ford v. Keys, 4 Chi. Leg. News, 156; 9 Fed. Cas. 426.

"Creditors issuing executions on judgment obtained upon demands long overdue against a bankrupt, who has been pressed in repeated instances to pay or secure the demand, and who failed to do so because of his inability, must be held to have had reasonable cause to believe that his debtor was insolvent." Buchanan v. Smith, 16 Wall. 277.

A debtor permitted judgment to be taken against him earlier than it could have been without his aid. An execution was issued on such judgment and his goods were levied upon. It was held to be within section 35 of the Act of 1867, as amended in 1874. Rogers v. Palmer, 102 U. S. 363.

The circumstances of each case will determine whether the levy of an attachment or execution shows a desire on the part of the debtor to give a preference. Wilson v. City Bank, 17 Wall. 473; Sage v. Wyncoop, 104 U. S. 319.

When a debtor permitted a creditor to enter a judgment the question is chiefly as to the intent to give a preference, and the court should take all the circumstances into consideration. Little v. Alexander, 21 Wall. 500.

A confession of judgment for a secured debt cannot be regarded as a preference as it takes nothing from the general creditors. Reber v. Gundy, 13 Fed. Rep. 53.

The fact that the bankrupt had manifested a desire that a certain creditor should succeed by proceedings in a suit in obtaining a preference does not prove that the debtor suffered his property to be taken on legal process with intent to prefer. Brown v. Jefferson Co. Nat. Bank, 9 Fed. Rep. 258.

An assignee in bankruptcy can maintain an action to vacate a sale upon execution issued upon a judgment on a note of the bankrupt, with a cognovit given with intent to effect a preference. Balfour v. Wheeler, 15 Fed. Rep. 229.

Where a judgment has been obtained against an insolvent debtor, and

his property seized, the court, in determining whether the proceedings are voidable as a preference, will consider the relations between the parties, their co-operation, the secrecy of their transactions, and other matters of like character. Balfour v. Wheeler, 18 Fed. Rep. 893.

Where a debtor gave a judgment note payable one day after date for a debt not then due, the facts constituted a presumption of an intent to give and obtain a preference, and this presumption is not overcome by evidence that the note was given at the urgent solicitation of the creditor. Clarion Bank v. Jones, 21 Wall. 325.

The judgment was taken in a state court by confession after the passage of the Act of 1867, but before it went into effect. Both parties had knowledge of the debtor's insolvency. This was held to be an unlawful preference. Traders' Bank v. Campbell, 14 Wall. 87.

The taking of a judgment upon a power of attorney was held not to be a confession of judgment within the meaning of the Act of 1867. Stern v. Schonfield, 22 Fed. Cas. 1310.

A debtor knowing himself to be insolvent, who allows an action to mature to judgment and execution, the effect of which will be to give a preference, is chargeable with suffering a preference by legal process. Warren et al. v. Tenth Nat. Bank et al., 10 Blatchf. 493; 29 Fed. Cas. 287.

A merely passive attitude on the part of a debtor in an action against him does not warrant an inference of an intent to give a preference. Wight v. Muxlow et al., 8 Ben. 52; 29 Fed. Cas. 1174.

A debtor who was sued for a just debt made a fictitious defense, which enabled another creditor, who brought a suit later, to obtain a judgment and the appointment of a receiver. Held, that the facts proved an intent to give a preference to the latter creditor. Ibid.

It is an unlawful preference for an insolvent debtor to make a confession of judgment when it is followed by a levy on his property. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

It is not a fraud on creditors for the bankrupt to fail to avail himself of usury as a defense. In re Kintzinger et al., 19 N. B. R. 152; 14 Fed. Cas. 709.

A few days before the commencement of proceedings, the bankrupts had offered to allow judgment to be entered against them, which was done accordingly and the property sold. The judgment creditors had knowledge of the insolvency of their debtors. Held, that the assignee in bankruptcy was entitled to have the levy set aside as a preference, and to recover of the judgment creditor the value of the property. Darling v. Townsend et al., 5 Fed. Rep. 176.

The fact of the issuing and levying of an execution on the same day judgment is rendered, and the subsequent commencement of voluntary proceedings in bankruptcy on the same day, is not conclusive evidence of a fraudulent preference through collusion of the debtor. Witt v. Hereth, 6 Biss. 474; 30 Fed. Cas. 104 (1875).

Under the Act of 1867, held, that confession of a judgment, issuing

execution, and sale of property under it, constituted an indirect transfer of the property by the debtor. The transfer and promise is considered as made when the warrant of attorney is executed by entry of judgment, irrespective of the date of the warrant. Zahm v. Fry, 9 N. B. R. 546; 30 Fed. Cas. 904 (1874).

Something more than passive resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property; but very slight evidence of the existence of a desire to prefer one creditor may be sufficient to avoid the transaction. Parsons v. Caswell, 1 Fed. Rep. 74.

Held, under the Act of 1867, that where a warrant of attorney was given more than six months before the commencement of proceedings, if the lien of the execution issued in pursuance thereof attached within six months, the creditor was entitled to no preference where he had reasonable cause to believe his debtor insolvent. In re Terry, 2 Biss. 356; 23 Fed. Cas. 849.

It is not receiving a preference to obtain a judgment; otherwise when property is taken on attachment or execution. In re Stevens, 4 Ben. 513; 23 Fed. Cas. 1.

In the case cited, the circuit court for the eastern district of Pennsylvania held, that there having been an agreement to give a judgment to secure a loan at the time it was made, and the warrant confessing such judgment having been omitted by mistake, it was not a fraud upon the provisions of the Bankrupt Act to carry out the terms of the contract even after the circumstances of the debtor had become involved, and that the judgment should not be set aside; and further that the issue of execution on the said judgment was not a fraudulent procurement of execution within the meaning of the Act. Stover v. Kennedy, 5 Rep. 136; 23 Fed. Cas. 194.

No inference of intent to prefer a creditor is to be derived from the fact that an insolvent debtor suffers a judgment by default whereby a preference results, it being neither a legal nor moral duty for an insolvent person to file a petition in voluntary bankruptcy, nor to defend against a just debt in order to give time to other creditors to institute bankruptcy proceedings. Partridge v. Dearborn, 9 N. B. R. 474; 18 Fed. Cas. 1279 (1873).

The exercise by a vendor of the right of stoppage *in transitu* is not a preference. So held in case where the bankrupt had assisted the vendor in regaining possession of the goods. In re Foot et al., 11 Blatchf. 530; 9 Fed. Cas. 357.

A debtor gave a confession of judgment while he was solvent. Several months later, after he had become insolvent, judgment was entered and an execution levied on his effects. Held, that the test was his condition at the time he gave the confession, and not when the execution was issued. Field v. Baker et al., 12 Blatchf. 438; 9 Fed. Cas. 9.

An assignee in bankruptcy brought an action of replevin against a sheriff who levied on goods upon an execution on a judgment entered in pursuance of a power of attorney given when the creditor had knowledge

of the insolvency of the firm. It was held that the assignee had a right to the possession of the property, and that the giving of a note with warrant of attorney was a fraudulent preference. Haughey v. Albin, 2 Bond, 244; 11 Fed. Cas. 837.

A creditor, who had knowledge of his debtor's embarrassments, seized his property on execution within four months of the filing of a petition in bankruptcy. The court granted a perpetual injunction against the sale of the property under the execution, holding that the circumstances showed an intended preference and a purpose to defeat the operation of the Bankrupt Act. Haskell v. Ingalls, 1 Hask. 341; 11 Fed. Cas. 772.

A merely passive attitude on the part of a debtor toward an action in which a judgment was entered and a levy made does not amount to a fraudulent preference. Britton v. Payen et al., 7 Ben. 219; 4 Fed. Cas. 183.

Where a warrant of attorney was given when the debtor was solvent, and later, when he had become insolvent, the creditor entered judgment on it, and levied an execution on the property of the debtor, the creditor having cause to believe that the latter was insolvent, the proceedings were held to be an illegal preference. Clark v. Iselin et al., 10 Batchf. 204; 5 Fed. Cas. 881.

The creditor had loaned money to the debtor in good faith when neither had reasonable cause to believe that the latter was insolvent, or intended any fraud. Later, when both parties had cause to believe the debtor to be insolvent, and intended a fraud, and within four months prior to the filing of a petition in bankruptcy, the creditor caused judgments to be entered in pursuance of the warrant. They were held to be fraudulent preferences. In re Lord, 5 N. B. R. 318; 15 Fed. Cas. 873.

Under the Act of 1867, it was held that when the creditor had cause to believe the debtor insolvent, a judgment by default, followed by execution, is a preference, and does not give a valid lien against the assignee in bankruptcy. Fitch et al. v. McGie, 2 Biss. 163; 9 Fed. Cas. 180.

One of the members of an insolvent firm, at the request of a creditor, reluctantly delivered a message to the latter's attorney, directing him to enter up judgment on a note with warrant of attorney previously given by the firm. Held, that he thereby caused the entry of the judgment. In re Benson et al., 16 N. B. R. 75; 3 Fed. Cas. 255.

Construing section 39 of the Act of 1867, Judge Hopkins, of the western district of Wisconsin, said: "The debtor as above stated was confessedly insolvent when sued, and when his property was taken on the execution he took no steps to prevent a judgment on his property from being thus taken; he, therefore, suffered an act to be done which he might have prevented which necessarily resulted in a preference in favor of the judgment creditor, and the law presumes that he intended the natural consequences of his acts. The result of his inactivity being necessarily an act to give a preference to the creditor suing, he is in law chargeable with having intended to effect that purpose." In re Heller, 3 Biss. 153; 11 Fed. Cas. 1051.

A debtor who had absconded to Canada, crossed to the American side at Niagara Falls to permit the service of summonses on him in four attachment suits. Judgments were subsequently entered in pursuance of the service made under these circumstances and executions issued and levied on the debtor's property. Proceedings in bankruptcy having been commenced, and an assignee appointed, the latter filed a bill in equity to set aside the judgments. The court held that the action of the bankrupt amounted to a fraudulent preference and that the judgments were void under section 35 of the Act of 1867. Beattie v. Gardner et al., 4 Ben. 497; 3 Fed. Cas. 1.

Where an insolvent debtor pays a judgment that was entered without fraud or collusion, and upon which an execution might be issued at once, for the purpose of enabling him to continue his business, such payment was held not to be in violation of the Bankrupt Act of 1841. Ex parte Garwood, Crabbe, 516; 10 Fed. Cas. 58 (1843).

A creditor who sells the property of his debtor upon execution may be assumed to have reasonable cause to believe that the debtor is insolvent. Mayer v. Hermann, 10 Blatchf. 256; 16 Fed. Cas. 1240.

A firm is chargeable with knowledge of its insolvency when it is pressed by its creditors and is unable to pay its matured liabilities. A warrant of attorney given under such circumstances to one of its creditors is a preference. Campbell v. Traders' Nat. Bank, 2 Biss. 423; 4 Fed. Cas. 1192.

Fraudulent Transfers.

In the absence of evidence to the contrary, the law presumes the acceptance by a creditor of a deed by the debtor giving him a preference. In re Saunders, 13 N. B. R. 164; 21 Fed. Cas. 524 (1875).

Where an insolvent debtor transfers property to a creditor as security for a pre-existing debt, the transaction amounts to a preference in the absence of proof that the debtor was ignorant of his insolvency. Wager v. Hall, 16 Wall. 584.

Where a creditor in an exchange received property far exceeding in value that which he surrendered, the transaction amounts to a preference. Waring v. Buchanan et al., 19 N. B. R. 502; 29 Fed. Cas. 228.

The maker of a note paid the holder under circumstances amounting to a fraudulent preference. It was held that the payment was not excepted from the terms of the law on account of its having been made on a past-due note secured by the indorsement of a responsible person. Bartholow v. Bean, 18 Wall 635.

Where a debtor accepts a draft drawn on him by a creditor whom he knows to be insolvent, for the purpose of giving a preference, the transaction is void, and the acceptor can be required to pay the debtor's assignee in bankruptcy the amount of the draft. Fox v. Gardner, 21 Wall. 475.

An oral agreement made at the time when the debt was entered into that security would be given when required, was held not to validate a mortgage given under circumstances which would otherwise make it a preference. In re Conner et al., 1 Low. 532; 6 Fed. Cas. 312.

A note and mortgage given to induce certain creditors to vote for a composition are a fraudulent preference, and can be avoided at the suit of the assignee. Howell et al. v. Todd et al., 12 Fed. Cas. 707.

The effect of a transfer by one partner to another of his interest in the assets of the firm is to give the individual creditors an advantage over the firm creditors, and is, therefore, void as a preference. In re Cook et al., 3 Biss. 122; 6 Fed. Cas. 378.

H. owed the defendant bank $1,000 on a note, and had a credit of $772. A few days before an adjudication in bankruptcy, he gave his check for $772, and paid $228 in cash, and took up his note. The bank had knowledge of his insolvency. Held, that the check on the deposit was not a fraudulent preference, but that the payment of $228 was, and that the assignee in bankruptcy could recover it from the bank. Hough v. First Nat. Bank, 4 Biss. 349; 12 Fed. Cas. 564.

The maker of a promissory note, knowing himself to be insolvent, made payment to an indorser who had reason to believe that the maker was insolvent. This was held to be a fraudulent preference within the meaning of section 35 of the Act of 1867, and it was further held that the assignee could sue for and recover the amount paid. Ahl et al. v. Thorner, 2 Bond, 287; 1 Fed. Cas. 220.

The owner of some logs delivered them at a sawmill on a conditional sale to the millowner, which was not consummated. The millowner becoming insolvent, gave the owner of the logs sawed lumber instead of logs, to an amount in excess of his actual interest. It was held that this was a preference and rendered the transaction void. Bailey v. Henderson, 9 Ben. 534; 2 Fed. Cas. 373.

Where a debtor makes a preference under the influence of threats and coercion, it is none the less a preference within the Act of 1841, if made in contemplation of bankruptcy. Atkinson v. Farmers' Bank, Crabbe, 529; 2 Fed. Cas. 100 (1844).

Where, under the conditions of a voluntary assignment, certain creditors executed releases, they are regarded as preferred within the meaning of the provision of the Act of 1841 denying discharge in such cases. Aspinwall's Case, 2 Fed. Cas. 65 (1843).

While there were executions outstanding against the debtor, and no property to satisfy them, he assigned all of his stock of goods to a firm of which his father-in-law was a member, in payment of a debt of $3,000. His other property, consisting of bills receivable, was of little value. It was held that the assignment, under the circumstances, amounted to a preference, and was made in contemplation of bankruptcy. In re House, 1 N. Y. Leg. Obs. 348; 12 Fed. Cas. 598 (1843).

An assignment to a trustee with preferences to some creditors over others, made in contemplation of insolvency, is conclusive evidence of an intent to defeat the operation of the Bankrupt Act. The trustee and all persons claiming under the assignment are charged with notice of the insolvency of the assignor, and the intent, by the terms of the instrument. Jackson v. McCulloch, 1 Woods, 433; 13 Fed. Cas. 225.

A chattel mortgage given by a bankrupt was otherwise invalid as a preference, but it was claimed that it was given in pursuance of a promise made when the debt was contracted. Under the facts in proof, the court decided that the promise to secure the claim was not sufficiently specific to validate the mortgage. In re Jackson I. M. Co., 15 N. B. R. 438; 13 Fed. Cas. 260.

It is a preference for an insolvent firm to make a conveyance of its assets to a continuing partner. If made within four months of filing a petition in bankruptcy it may be vacated by the joint creditors; or they may assent to such conveyance after proceedings in bankruptcy have been commenced, and prove their claim against the individual estate of the continuing partner, if he has assumed the joint debts. In re Johnson et al., 2 Low. 129; 13 Fed. Cas. 721.

An insolvent debtor conveyed his real estate to his wife without consideration, and thereupon she gave a mortgage to certain creditors of her husband, who knew him to be insolvent. This was held to be void as a preference given by the husband. Gibson v. Dobie et al., 5 Biss. 198; 10 Fed. Cas. 316.

Where a debtor settled with creditors at different rates, the burden of proof is upon those interested to show that all the creditors consented. If there is a single exception, that is sufficient to vitiate the settlement. Curran et al. v. Munger et al., 6 N. B. R. 33; 6 Fed. Cas. 982.

A bankrupt sold to his father-in-law, a few days before his petition in voluntary bankruptcy, the largest portion of his property, and received notes payable at long dates. The father-in-law cashed the notes, and paid to his own son, as mortgagee, the money thus furnished in discharge of a mortgage on the property of his daughter, the wife of the bankrupt. The father-in-law had knowledge of the bankrupt's insolvency. The court held that the transaction was clearly fraudulent and void as against creditors. Lawrence v. Graves, 5 N. B. R. 279; 15 Fed. Cas. 71.

A bill of sale of fixtures given within four months prior to the filing of a petition in bankruptcy to secure past-due rent is void as a preference. In re Eckenroth, 8 Fed. Cas. 286.

More than four months before the commencement of proceedings in bankruptcy against a corporation, an officer, without lawful authority, had executed a deed of trust to secure a debt. Within four months prior to the commencement of proceedings, the corporation ratified his action. The deed of trust was held to be fraudulent and a preference. In re Kansas City S., etc., Co., 9 N. B. R. 76; 14 Fed. Cas. 128.

A merchant gave a mortgage on his entire stock of goods to a creditor. Two years later, and within four months of the proceedings in bankruptcy, he gave another, which secured the previous debt with some accretion of interest, and also covered additions to the stock. The court held that the mortgagee's rights must be determined wholly by the second mortgage; that it was a preference under sections 35 and 39 of the Act of 1867, and that the mortgagee could not prove it as a debt against the estate of the bankrupt. In re Jordan, 9 N. B. R. 416; 13 Fed. Cas. 1121.

Turning over assets to pay one debt without retaining sufficient goods to pay other debts as they fell due is not a payment in the ordinary course of business. In re Dibblee et al., 3 Ben. 283; 7 Fed. Cas. 651.

In March, 1869, P., to secure a loan made at the time, gave C. a chattel mortgage on the goods in his store. The mortgagor remained in possession. The mortgage was not recorded until the 5th of March, 1870. On the 7th of March, C. took possession. In the meantime, P. had become insolvent, of which fact C. had knowledge. On the 30th of March, proceedings in bankruptcy were commenced against P. Thereafter the assignee in bankruptcy brought a suit against C. to recover the value of the goods taken under the mortgage. Held, that the mortgage was invalid; that the possession by the mortgagee operated as a preference, and that the assignee could recover the value of the goods taken. Harvey v. Crane, 2 Biss. 496; 11 Fed. Cas. 734.

It was held to be a fraudulent preference where a firm in embarrassed circumstances called a meeting of their creditors, and on the same day transferred to one creditor the note of a third party as security for an existing debt; but that the rule would not apply where such a transfer was made as collateral security for a new loan. Ex parte Shouse, Crabbe, 482; 22 Fed. Cas. 26 (1842).

Under the Act of 1867 a mortgage made out of the usual and ordinary course of business is *prima facie* evidence of a fraudulent preference. In re Palmer, 3 N. B. R. 283; 18 Fed. Cas. 1018 (1869).

An assignee in bankruptcy brought suit against a creditor who had received payment of his debt from the bankrupt, who was a private banker, after the bank had suspended payment and closed its doors. Held, that the payment was an illegal preference, and could be recovered by the assignee in bankruptcy. Markson v. Hobson et al., 2 Dill. 327; 16 Fed. Cas. 774.

An insolvent debtor sold his stock of goods to a creditor who had reasonable cause to believe him to be insolvent, and with the purchase price extinguished the vendee's claim and paid some other local creditors. The court held that the transaction was void, and that the assignee could recover the value of the goods from the purchaser. In re McDonough, 3 N. B. R. 221; 16 Fed. Cas. 68.

A debtor who was wholly unable to meet his current expenditures, though he seemed to have confidence that he might retrieve his affairs, gave a mortgage to a creditor who had reason to believe that his debtor was insolvent. A petition of the mortgagee that he be paid out of the proceeds of the mortgaged property was denied, on the ground that the mortgage was void against creditors. Merchants' Nat. Bank v. Traax, 1 N. B. R. 545; 17 Fed. Cas. 58.

"There is the best authority for saying that a trader who is insolvent, and knows it, and pays in full all securities or debts of one creditor may be presumed to intend to prefer that creditor." In re Perry et al., 19 Fed. Cas. 264.

When an insolvent debtor pays or secures one creditor in full, leaving

others unsecured, it rests upon the secured creditor to show that the debtor did not know he was insolvent at the time. Stobaugh v. Mills et al., 8 N. B. R. 361; 33 Fed. Cas. 110.

A creditor took the note and mortgage of an individual member of a firm in payment of a firm debt. This was held to be an unlawful preference over both the separate and partnership creditors. In re Parker, 11 Fed. Rep. 397.

An assignment by a debtor of all his property to pay certain debts in full, the balance to be applied *pro rata* upon other debts, is a preference on its face, and void. Stobaugh v. Mills et al., 8 N. B. R. 361; 23 Fed. Cas. 110.

C., who had a mortgage on a stock of goods owned by M., bought the stock, and took possession of it, knowing at the time that M. was insolvent. The court held that the transaction amounted to a preference, and that C. must pay into court the value of the property, with interest from the time of the sale. Smith v. McLean et al., 10 N. B. R. 260; 22 Fed. Cas. 591.

It was held to be a preference for the obligor on a bond to obtain securities from one of his debtors, and turn them over to indemnify his sureties. Smith v. Little et al., 5 Biss. 490; 22 Fed. Cas. 589.

For the purpose of giving a preference to a creditor of the bankrupt, a third party purchased logs of the bankrupt and took a transfer of a note held by the creditor. The court decided that he held such notes as trustee for the creditor; and that the acceptance of the logs was a preference. In re Stein, 16 N. B. R. 569; 22 Fed. Cas. 1232.

An insolvent debtor is presumed to have intended a preference when he does an act which operates as such. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

Where the creditor of a bankrupt had purchased property of the latter through an agent, and tendered the notes of the bankrupt in payment, the transaction was held to be an illegal preference. Fleming et al. v. Andrews, 3 Fed. Rep. 632.

A transfer of merchandise to replace goods fraudulently abstracted, though such transfer is honestly intended, constitutes a preference in the meaning of the Bankrupt Act. Sharp v. Philadelphia Warehouse Co., 19 N. B. R. 378; 21 Fed. Cas. 1168 (1880).

The bankrupts turned over their stock in trade to a purchaser who had indorsed their note, and with the proceeds took up such note. This was held to be a preference, and the court sustained a bill in equity by the assignee to recover the property transferred. Sill v. Solberg, 6 Fed. Rep. 468.

Certain creditors went to the bankrupt's store and helped themselves to goods, which they carried away on drays and wagons without objection on his part. This was held to be a preference, and a sufficient ground for refusing a discharge. In re Bernia, 5 Fed. Rep. 723.

The creditor of a bankrupt, having knowledge of the condition of his business, exchanged notes secured by a chattel mortgage for a de-

mand note, and immediately commenced suit and levied on all the property of the bankrupt, including some that was not covered by the mortgage. Held, that the transaction was a fraudulent preference. Waring v. Buchanan et al., 19 N. B. R. 502; 29 Fed. Cas. 228.

"A transfer in any case by a debtor of a large portion of his property while he is insolvent to one creditor without making provision for an equal distribution of his proceeds to all his creditors necessarily operates as a preference to him, and must be taken as conclusive evidence that a preference was intended unless the debtor can show that he was ignorant of his insolvency, and that his affairs were such that he could reasonably expect to pay all his debts. The burden of proof is upon him in such case, and not upon the assignee or contestant in bankruptcy." Toof v. Martin, 13 Wall. 40.

Judge Hopkins, of the district court of Wisconsin, said: "The preferences declared void by the second section of the Act of 1841 are such as were made when he contemplated becoming a bankrupt under the Act. There, the intent of the debtor was the principal question. Under the present Act (1867) a preference created by a party 'becoming insolvent' is made void, and his intent or belief is not the question." Hall v. Wager et al., 3 Biss. 28; 11 Fed. Cas. 271.

A. & B. as partners conveyed all their property to secure the indorsers of certain notes. Afterward suits were commenced on some of the debts so secured, but before judgment was entered A. & B. became bankrupts. Some of the personal property so assigned had been sold previous to the bankruptcy, and the proceeds applied to the payment of the secured debts. It was held, under the Act of 1841, that the assignment was void as a preference; that the judgments were not valid liens within the last proviso of section 2 of the Act of 1841, and that the proceeds could be followed by the assignee. A. & B., the bankrupts, were refused a discharge. Everett v. Stone et al., 3 Story, 446; 8 Fed. Cas. 898 (1844).

Judge Drummond used the following language: "It is also claimed on the part of the bank that the bankrupts received a considerable fund at the time this contract was made which went to increase their estate and, therefore, it not being a security given for an antecedent indebtedness, but for money actually received at the time, it ought to be held valid. Undoubtedly there are distinctions between a case where an effort is made to secure or pay a precedent debt and that where money or property is received at the time by the bankrupt as a part of the contract which is the subject of investigation; but that circumstance alone cannot render a contract valid as against creditors which otherwise is unlawful, because that would enable one creditor to obtain a priority of payment over another; and to hold the contract valid in this case would give the bank a preference over the general creditors of the bankrupt which ought not to be allowed unless the contract is in all respects valid." Adams v. Merchants' Nat. Bank, 2 Fed. Rep. 174.

Where the act complained of does in fact give a preference, the intent will be inferred unless the contrary is shown. In re Black et al., 2 Ben. 195; 3 Fed. Cas. 495.

Circumstantial evidence may be resorted to to establish the intent of a debtor to give, and the intent of a creditor to secure an unlawful preference. Giddings v. Dodd et al., 1 Dill. 116; 10 Fed. Cas. 338.

The question of intent to prefer is one of fact to be submitted to the jury. In re Seeley, 19 N. B. R. 1; 21 Fed. Cas. 1007 (1879).

In bankruptcy proceedings a surety or indorser is regarded as a debtor, and subject to the restriction of the law against making preferences when insolvent. In re Shoenberger, 4 Cin. Law Bul. 965; 21 Fed. Cas. 1334 (1879).

It was held to be corroborative of the evidence of an intent to give a preference that the testimony of the debtor and the creditor alleged to have been preferred was not produced. Darling v. Townsend et al., 5 Fed. Rep. 176.

The provision of the Bankrupt Law of 1867 declaring a sale, transfer, etc., made out of the ordinary course of business, *prima facie* evidence of fraud, throws the burden of proof on the purchaser in such case to sustain the validity of his purchase. Wilson v. Stoddard, 4 N. B. R. 254; 30 Fed. Cas. 225 (1870).

Declarations of the bankrupt at or previous to the transaction, though made without knowledge of the creditor, may be received in evidence to prove a fraudulent preference where there was evidence given tending to show a conspiracy between the bankrupt and the creditor. Nudd v. Burrows, 91 U. S. 426.

The court considered the two clauses of section 35 of the Act of 1867, and held that the first was limited to a creditor of the bankrupt, or one who is under any liability for him, and who receives money or property by way of preference, and that the second applies only to the purchase of property of the bankrupt by a person who has no claim against him. Gibson v. Warden, 14 Wall. 244.

No creditor who obtains a fraudulent preference from a bankrupt can retain any benefit thereby. In re Drummond, 4 Biss. 149; 7 Fed. Cas. 1110.

The question being raised whether a conveyance had been made six months before the commencement of proceedings, it was held that the time was fixed by the actual execution and delivery of the deed, and not the date. In re Rooney, 6 N. B. R. 163; 20 Fed. Cas. 1153.

A payment made by the debtor after the filing of a petition in bankruptcy is merely a nullity, and is not to be regarded as a preference. In re Randall et al., 1 Saw. 56; 20 Fed. Cas. 226.

"Insolvency is merely the opposite of solvency. A man who is unable to pay his debts out of his own means, or whose debts cannot be collected out of such means by legal process, is insolvent; and this is so although it may be morally certain that with indulgence from his creditors in point of time he may be ultimately able to satisfy his engagements in full. The term insolvency imports a present inability to pay." In re Randall et al., 1 Deady, 557; 20 Fed. Cas. 222.

Insolvency, as the term is used in the bankrupt law, means the condition of a person unable to pay his debts as they fall due or in the usual course of business, although he may be able to pay his debts at a future

time upon the winding up of his business. Morgan et al. v. Mastick, 2 N. B. R. 521; 17 Fed. Cas. 752.

A debtor made a conveyance of his property to a creditor who agreed to hold the property to such uses as might be designated on or before a certain day in a composition between the debtor and his other creditors. It was further agreed that if no composition was made by the time fixed, the grantee should hold the property absolutely in discharge of the grantor's indebtedness to him. No composition having been made, the creditor took possession of the property. It was held that the date of the payment to the creditor was the day when the title vested in him absolutely. Haskill v. Fry, 14 N. B. R. 525; 11 Fed. Cas. 777.

It is the primary object of bankrupt laws to secure an equal distribution of a debtor's assets among his creditors. Under section 39 of the Act of 1867, a debtor makes a preference if he pays one creditor before another. But two things are necessary to make such claim fraudulent: First, the debtor must be insolvent; and, second, he must intend to prefer the creditor. Morgan et al. v. Mastick, 2 N. B. R. 521; 17 Fed. Cas. 752.

"The 'preference' must be an advantage actually given to one or more of its creditors over the others, with the knowledge of his situation, and the intent to accomplish this end. The 'intent' is an element of the objectionable transaction according to the letter of the law, and though one is presumed to intend the actual results of his acts, the intent is essential, and must be shown by his acts and the circumstances." Miller v. Keys, 3 N. B. R. 224; 17 Fed. Cas. 328.

When a debtor sells his property to his father-in-law, who knows him to be insolvent, and applies the purchase money to pay a mortgage on his wife's property, the transaction is a transfer of the debtor's property to his wife in fraud of his creditors. Andrews v. Graves, 1 Dill. 108; 1 Fed. Cas. 878.

Where a bankrupt transferred all of his property to a creditor three weeks before filing his petition, leaving many debts unpaid, the transaction was held to be a preference unless explained, and it could not be excused because it was done under the influence of threats. When the necessary effect is to prefer one creditor, the intent will be presumed. In re Batchelder, 1 Low. 373; 2 Fed. Cas. 1012.

It is an illegal preference for a creditor to release the goods of an insolvent debtor from an execution, and at the same time take a transfer of other assets from the debtor in payment of the debt. Clark v. Iselin et al., 10 Blatchf. 204; 5 Fed. Cas. 881.

A conveyance to his wife by a member of a firm in embarrassed circumstances is fraudulent where existing debts were all paid by others resulting in bankruptcy. Antrim v. Kelly, 4 N. B. R. 587; 1 Fed. Cas. 1062.

A creditor who purchases goods of an insolvent debtor is entitled to retain them or their value, as against the assignee, to the extent that he had paid for the goods; but he cannot credit such goods on a pre-existing

debt. Such credit will be considered a preference and in fraud of the bankrupt law. Scammon v. Bowers, 1 Hask. 496; 21 Fed. Cas. 623 (1873).

Where securities are given in pursuance of a promise made when the debt was contracted, the transaction is none the less void if it was otherwise a preference. Graham v. Stark et al., 3 Ben. 520; 10 Fed. Cas. 939.

Judge Blatchford decided that to make a transaction between a debtor and his creditor void, six elements must coexist: "The insolvency, the intent to give the preference, and the doing or suffering the thing which works the preference, are the elements on the part of the debtor. The elements on the part of the creditor are the receiving or being benefited by such thing, the having reasonable cause to believe the insolvency of the debtor, and the having reasonable cause to believe that a preference is intended." Kohlsaat v. Hoguet et al., 4 Ben. 565; 14 Fed. Cas. 835.

Under the provisions of the Act of 1867 (section 5128, R. S.) there must be a concurrence of the following facts to avoid an illegal preference: "First, the debtor must be insolvent, or acting in contemplation of insolvency. Second, his purpose must be to give a preference. Third, when a preference has been obtained by legal process, the seizure or attachment must have been procured or suffered by the debtor. Fourth, the creditor must have reasonable cause to believe the debtor to be insolvent. Fifth, he must know that the seizure is a fraud on the provisions of the Bankrupt Act; and, Sixth, in voluntary cases, the preference must have been given within four months of the filing of the petition in bankruptcy." In re Blabon et al. v. Hunt et al., 2 N. J. L. J. 179; 3 Fed. Cas. 493.

In construing the provisions of the Law of 1841 respecting fraudulent preferences, Judge Woodbury used the following language: "But the greatest error has been in considering almost every sale or payment, just before stopping payment, as an illegal preference. The payment or conveyance must be for the purpose of preferring a creditor. There had been numerous decisions upon this point; and a number of instances might be mentioned, as illustrating the question of intent. Thus, if a debtor went to a particular creditor, hunted him up, picked him out from the rest, and paid him more in proportion than he could pay the others; if he elected to pay a relative to whom he was indebted; if the transfer or conveyance was done secretly; if it was out of the usual course of business, in a new, extraordinary, or unusual manner; if it was just in the hurry of going into insolvency, a day or two or an hour or two before making the petition; if payment of a debt was made before it became due; or if a debtor should convey away the whole of his property on the eve of bankruptcy. Any of these circumstances would tend to show his intention to prefer the creditor to whom the payment or transfer was made. On the other hand, if the creditor had pressed hard for his debt; if payment was made under the pressure of importunity, or threats of legal process; if it was in the ordinary course of dealing between the parties; these would be circumstances tending to show that some other motive actuated the debtor, rather than the intention to prefer a creditor. And where the conse-

quences of an act are penal, and a fair and honest motive is as consistent with the act as a fraudulent one, the former is, of course, to be presumed to have been the real and true one." Ashby v. Steere, 2 W. & M. 347; 2 Fed. Cas. 15.

Transactions Held to be Valid.

Payments to a retiring partner in satisfaction of his interest in the co-partnership is not a preference of one creditor over another. In re Emery & Leeds, 1 Fed. Cas. 786 (1843).

Held, that section 35 of the Act of 1867 did not forbid the exchange of one security for another of equal value within the four months before the commencement of proceedings, notwithstanding one of the parties knew that the other was insolvent. Sawyer v. Turpin, 91 U. S. 114.

It was held not to amount to an intent to defraud for a debtor to prefer his individual creditors over persons who had claims against him for a statutory liability for the debts of a corporation of which he was a stockholder. Cookingham v. Ferguson et al., 8 Blatchf. 488; 6 Fed. Cas. 450.

An assignee in bankruptcy sued the indorsers of an accommodation note which was paid at maturity by the maker, who had received all the proceeds for the money so paid. It was held that he could not recover as the payment was not a preference under section 35 of the Act of 1867. Bean v. Laflin, 15 N. B. R. 333; 2 Fed. Cas. 1139.

Where no fraud was intended or effected, an insolvent debtor may borrow money and give security therefor on his property. Gaffney's Assignee v. Signaio, 1 Dill. 158; 9 Fed. Cas. 1026.

A bank having called upon a depositor to make good an overdraft, or secure it, he sent them securities to the amount of $1,527.39. Before it received them, other credits had been made upon his account which gave him a balance. Subsequently, he drew out the balance and the $1,527.39. A few days later, proceedings in bankruptcy were commenced against him, and the assignee brought suit against the bank to recover the $1,527.39. It was decided that the transaction involved no violation of the Bankrupt Act. French v. First Nat. Bank, 8 Ben. 248; 9 Fed. Cas. 787.

The giving of a mortgage to secure a debt which amounts to more than the value of the mortgaged premises is not a preference; and the mortgagee, after deducting the value of the security, may prove the balance of his debt. Coxe et al. v. Hale et al., 10 Blatchf. 56; 6 Fed. Cas. 689.

Where an insolvent corporation gave a mortgage that was intended as an unlawful preference, but the proceeds of which were subsequently diverted to another purpose, it was held that it did not amount to a preference within the terms of the Act of 1867. Corbett v. Woodbury, 5 Saw. 403; 6 Fed. Cas. 531.

Planters, who were indebted to their commission merchants, shipped cotton to them in consideration of further advances. The shipments were held to be a sale, and not a preference. Harrison v. McLaren, 10 N. B. R. 244; 11 Fed. Cas. 654.

A payment to a secured creditor is not a fraud upon the Bankrupt Act. Halleck et al. v. Tritch, 17 N. B. R. 293; 11 Fed. Cas. 286.

The payment by an insolvent debtor of a percentage to some of his creditors, under circumstances that would not prevent other creditors from receiving an equal percentage, is not an unlawful preference. In re Hapgood et al., 2 Low. 200; 11 Fed. Cas. 473.

A debtor, though he is known to be embarrassed, can make an honest sale of his property for the purpose of providing funds to pay his debts and avoid insolvency. Darby v. Lucas, 5 N. B. R. 437; 1 Dill. 164; 6 Fed. Cas. 1183, 1184.

It appeared that within a month before the filing of a petition the creditor had executed two assignments conveying his real and personal property to be distributed among his creditors *pro rata*. It was held, under the Act of 1841, that these assignments were not preferences, and would not bar his discharge. In re Ely, 1 N. Y. Leg. Obs. 343; 8 Fed. Cas. 599.

It is not an illegal preference to give security for a present loan of money. Clark v. Iselin et al., 10 Blatchf. 204; 5 Fed. Cas. 881.

It is not presumptively a fraudulent preference for a debtor to assign his books of account to a creditor within two months prior to the commencement of proceedings in bankruptcy. In re Broich et al., 7 Biss. 303; 4 Fed. Cas. 205.

When an insolvent debtor makes a payment not knowing that he is insolvent, the law will not presume that he thereby intended a preference, though such was its effect. In re Oregon Bulletin Printing & Pub. Co., 13 N. B. R. 506; 18 Fed. Cas. 773 (1876).

It was held that bonds and coupons of a railroad were not commercial paper within the meaning of the Act of 1867; also that the payment of interest coupons by a railroad, after suit was brought or threatened thereon, was not a preference of creditors within the meaning of the law. In re Oplousa & G. W. R. Co., 3 N. B. R. 31; 18 Fed. Cas. 751 (1869).

Where a creditor accepts a compromise without deceit having been practiced upon him, he cannot be heard in a petition alleging a preference because other creditors received more than he did. In re Munger et al., 4 N. B. R. 295; 17 Fed. Cas. 986.

To make a payment voluntary on the part of the debtor, it must originate with him, and this cannot be said to occur where the first step was taken by the creditor. In re Rowell, 2 N. Y. Leg. Obs. 285; 20 Fed. Cas. 1288.

Where a depositor gave a check against his balance in a bank in payment of a note held by the latter, the transaction was held not to be a fraudulent preference within the meaning of section 5128, R. S. Robinson v. Wis. M. & F. Int. Co. Bank, 9 Biss. 117; 20 Fed. Cas. 1053.

Under the Act of 1841 a conveyance made two months before the commencement of proceedings was held not to be void where the grantee acted in good faith, without knowledge of the bankrupt's intention to defraud creditors. McLean v. LaFayette Bank et al., 3 McLean, 587; 16 Fed. Cas. 264 (1846).

A second chattel mortgage had been given to correct an error in a

previous mortgage executed more than four months previous to the proceedings in bankruptcy. It was held that it was not an illegal preference under the Law of 1867. Player v. Lippincott et al., 4 Dill. 124, 125; 19 Fed. Cas. 862, 863.

Held, that a mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refused the security their ratable proportion of the proceeds, is not a violation of the Bankrupt Act. In re Union Pac. R. Co., 10 N. B. R. 178; 24 Fed. Cas. 624.

Where the maker of a note pays the holder, the payee and indorser is not chargeable with receiving a preference, although he had knowledge of the maker's insolvency; but the court held that the contrary would be true if the indorser procured such payment to be made with intent to give a preference. Thomas v. Woodbury, 1 Hask. 559; 23 Fed. Cas. 982.

The maker of a note paid an indorser a part of the principal and borrowed from him the balance necessary to complete the payment, whereupon the indorser paid it. Held, that the indorser was not chargeable with receiving a preference except as to the amount paid by the maker. Ibid.

Creditors conspired with the aid of their debtor to secure an advantage over other creditors. Held, under the Act of 1867, that if the means used were not unlawful, and the preferences were made more than two months before the commencement of proceedings in bankruptcy, the transaction may be valid. Van Kleeck v. Miller et al., 19 N. B. R. 484; 28 Fed. Cas. 1025.

The treasurer of a building and loan association, having in his hands a sum of money belonging to an association, deposited it in a bank, taking a certificate of deposit payable to himself as treasurer. Sixty days later a petition in bankruptcy was filed against him. The deposit was held not to be an unlawful preference, the association having no cause to believe him to be insolvent. Lindsey v. Lambert B. & L. Ass'n, 4 Fed. Rep. 48.

A creditor is not to be held as unduly preferred by a bankrupt unless at the time the creditor understood himself to be dealing direct with him or with his agent for a conveyance, security, transfer, or payment out of the funds of the debtor; thus withdrawing funds appropriated by law for the benefit of all creditors. Winsor v. Kendall, 3 Story, 507; 30 Fed. Cas. 320 (1844).

Members of a firm in New York were also members of a firm in Canada, and the latter mortgaged its property for a loan to carry on its business and pay existing debts. Held, that this was not a preference on the part of the New York firm. In re White, 18 N. B. R. 107; 29 Fed. Cas. 966.

An exchange of security, even after the debtor is known to be insolvent, is perfectly valid if the creditor receives no more in value than he gives up. Such new security, being substituted within four months of the filing of the petition in bankruptcy, is not invalidated by the Bankrupt Act. Sawyer v. Tarpin, 1 Holmes, 226; 21 Fed. Cas. 589 (1873).

It is not necessarily a violation of the bankrupt law for a creditor to receive payment or take security in dealing with a person whom he might

suspect to be in embarrassed circumstances. Stucky v. Masonic S. Bank, 108 U. S. 74.

The constitution of a stock exchange provided that where a member became insolvent he might sell his seat for the benefit of members to whom he was indebted. Held, that a sale under this provision was not a violation of the Bankrupt Act of 1867. Hyde v. Woods, 94 U. S. 523.

An insolvent debtor gave a mortgage on real estate to secure a *bona fide* indebtedness to his wife, who had no knowledge of his insolvency. The court refused to set aside the mortgage at the suit of the assignee in bankruptcy. Medsker v. Bonebrake, 108 U. S. 66.

The execution of a new mortgage for an existing debt already secured by a mortgage on the same property, although given within four months before the adjudication, is not a preference. Burnhisel v. Firman, 22 Wall. 170.

A creditor had acquired a lien by execution on the stock of his debtor exceeding in value the amount of his claim. Prior to proceedings in bankruptcy, the debtor transferred to him bills receivable, and he thereupon satisfied the judgment. This transaction was held to be valid. Clark v. Iselin, 21 Wall. 360.

The borrowing of money by an insolvent debtor, and the pledging of property to secure the loan is held not to violate the Act of 1867 where the debtor entertains the hope of overcoming his difficulties. Tiffany v. Boatman's Institution, 18 Wall. 375.

Where the bankrupt regarded a certain debt as in the nature of a trust, his settlement of the same was held not to be a fraudulent preference. In re Frantzen, 20 Fed. Rep. 785.

The bankrupt had turned over certain materials of little value, which he had procured for family use, to secure a small debt. This was held not to be a fraudulent preference. In re Scott, 11 Fed. Rep. 133.

After the failure of the bankrupt, he returned to the seller a lot of goods received a few days previous. This was held not to be a payment or transfer of property. In re Aspinwall, 11 Fed. Rep. 156.

Under the circumstances of the case, the court held that delivery by a debtor four days before the commencement of proceedings of a tannery and the hides contained therein for the purpose of finishing them, did not amount to a fraudulent preference. Hauselt v. Harrison, 105 U. S. 401.

The debtor gave a deed of trust to secure a debt previously secured by a mechanic's lien. This was held to be mere change of securities, and not a fraudulent preference. In re Weaver, 9 N. B. R. 132; 29 Fed. Cas. 845.

Held, under the circumstances of the case, that an assignment made by the bankrupt about one year before his failure was not made in contemplation of bankruptcy. In re Smith, 9 Fed. Rep. 592.

Executing a chattel mortgage more than four months before, with an agreement that it be not recorded, and it being not in fact recorded until within prior to the bankruptcy, is not a void preference under the Act of 1867. Matthews v. West (Cir. Ct.), 48 Fed. Rep. 664.

The Act of 1800 went into effect on June 2d of that year. A deed was

delivered on the 30th of May, but not acknowledged until June 14th. It was held that the deed was made on the former day, and that it was not within the contemplation of the Act. Wood v. Owings, 1 Cranch, 239.

The court of bankruptcy upheld a settlement which was made with a proviso that no other creditor should receive better terms, notwithstanding the debtor afterward paid some of his other creditors in full. In re Sturges et al., 8 Biss. 79; 23 Fed. Cas. 307.

A transfer of real estate by the debtor to his daughter ten years before the adjudication was held not to be a fraud upon creditors within the meaning of section 14 of the Act of 1867. Warren v. Moody, 122 U. S. 132.

Under the Act of 1841, a sale of property to a creditor more than thirteen months before the debtor filed his petition in bankruptcy, made in good faith, and without knowledge on the part of the grantee that the grantor contemplated going into bankruptcy, is valid as to the grantee, even though it might prevent the bankrupt from getting his discharge. Ashby v. Steere, 2 Woodb. & M. 342; 2 Fed. Cas. 15 (1846).

Where the vendee had no notice of a previous act of bankruptcy by the vendor, or of his intention to go into bankruptcy, a *bona fide* conveyance of property for an adequate consideration, more than two months before the debtor filed his petition, is not volid, though the vendor was in fact insolvent at the time. Bennett v. Mitchel, 6 Law Rep. 16; 7 Fed. Cas. 462 (1842).

A man who believed himself solvent pledged his property to another whose money he had unlawfully used. It was held that such a transaction was not a preference under the Act of 1867, and that money paid to redeem the property thus pledged could not be recovered by the assignee in bankruptcy. Jenkins v. Meyer, 2 Biss. 303; 13 Fed. Cas. 529.

It is not a fraud within the meaning of the Act of 1867 (section 5021, R. S.), to endeavor to secure a *bona fide* debt from a creditor in embarrassed circumstances. In re Bonsfield & Poole M. Co., 16 N. B. R. 489; 3 Fed. Cas. 1013.

"Reasonable Cause to Believe."

Judge Lowell held under the Act of 1867 that the illegality of a preference depended upon the actual knowledge of the creditor. Peckham v. Cozzens, 6 Fed. Rep. 598.

Judge Dillon affirmed a decision by the register that the word "knowledge" in section 35 of the Act of 1867, as amended, means actual knowledge, and not such as is to be inferred from notice of a state of facts that should put the person on inquiry. In re Hauck et al., 17 N. B. R. 158; 11 Fed. Cas. 831.

To defeat a preference the creditor must have knowledge of such facts as are calculated to produce a reasonable belief of the debtor's insolvency. It is not sufficient that he have cause to suspect simply. Claridge v. Kulmer et al., 1 Fed. Rep. 389.

It is immaterial what a creditor thinks or knows of his debtor's intentions if he has reasonable cause to believe that he is insolvent when he

takes a preference from him. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

It was held, under the Act of 1867, that a creditor who held protested paper of the bankrupt at the time he received the reference should be presumed to have knowledge of the insolvency. Swan et al. v. Robinson, 5 Fed. Rep. 287.

"Reasonable cause to believe" means a state of facts or circumstances which would lead any prudent man to the making of inquiries. In re McDonough, 3 N. B. R. 221; 16 Fed. Cas. 68.

The question to be answered as to a preferred creditor is whether he had reasonable cause to believe the debtor insolvent, not what he did believe. Hall v. Wager et al., 3 Biss. 28; 11 Fed. Cas. 271.

Security may be enforced although the debtor was in fact insolvent at the time it was given, and although it was given out of the ordinary course of business, if the creditor had no reasonable cause to believe the debtor insolvent. So held under the Act of 1867. Lee v. Franklin Ave. German Sav. Inst. et al., 3 N. B. R. 218; 15 Fed. Cas. 155.

Knowledge of the law by a preferred creditor is not necessary to avoid the preference, if he knows the insolvency of the debtor, or such facts as should put him upon his inquiry. Lloyd v. Strowbridge, 16 N. B. R. 197; 15 Fed. Cas. 731.

Parties having knowledge of the insolvency of a debtor are bound to inform themselves whether or not the condition continues, and an erroneous belief that the debtor has settled with his other creditors will not validate a transfer which amounts to a preference. Curran et al. v. Munger et al., 6 N. B. R. 33; 6 Fed. Cas. 982.

It was held not to be a fraudulent preference where a debtor gave a mortgage to secure a prior loan, when there was no reason at the time to suppose that the debtor would not be able to pay his liabilities. Nash v. LeClercq et al., 17 Fed. Cas. 1171.

It constitutes reasonable cause to believe a debtor insolvent that the creditor knows that he has failed to pay its commercial paper at maturity. Warren et al. v. Tenth Nat. Bank et al., 10 Blatchf. 493; 29 Fed. Cas. 287.

A bank had received checks which were dishonored when presented at the bank on which they were drawn. It was held that this put the bank on inquiry as to the solvency of the drawers. Warren et al. v. Tenth Nat. Bank et al., 5 Ben. 395; 29 Fed. Cas. 284.

A creditor having knowledge that his debtor was unable to pay his debts at maturity is put upon his inquiry at once, and, if he receives a preference, must surrender the property so received to the assignee. In re Forsyth et al., 7 N. B. R. 174; 9 Fed. Cas. 465.

One member of an insolvent firm was president, and another cashier of a bank. Their knowledge of the insolvency of the firm was held to be knowledge of the bank. Nesbit v. Macon B. & T. Co., 12 Fed. Rep. 686.

"A creditor may be said to have reasonable cause to believe his debtor to be insolvent when such a state of facts is brought to his notice respecting the affairs and pecuniary condition of his debtor * * * as would

lead a prudent business man to the conclusion that his debtor is unable to meet his obligations as they mature in the ordinary course of business." Buchanan v. Smith, 16 Wall. 277.

A party cannot be said to have reasonable cause to believe that his grantor or mortgagor is insolvent unless such was the fact; but if it appears that the party making the conveyance was actually insolvent, and that the means of knowledge upon the subject were at hand, the party receiving the assignment and omitting to make the inquiries should be held to have reasonable cause to believe that the grantor was insolvent. Scammon v. Cole, 5 N. B. R. 257; 21 Fed. Cas. 627; 3 N. B. R. 393 (1871); 21 Fed. Cas. 632 (1869).

The execution creditors knew that their debtors had previously compromised with creditors at forty-five cents on the dollar. Held, that this did not constitute reasonable cause to believe that they intended to give a preference by suffering an execution to be levied upon their property. Warren et al. v. Tenth Nat. Bank et al., 5 Ben. 395; 29 Fed. Cas. 284.

A client is chargeable with knowledge possessed by his attorney of facts which would make the collection of a debt a preference. Mayer v. Hermann, 10 Blatchf. 256; 16 Fed. Cas. 1240.

To defeat a conveyance by an insolvent debtor it is not necessary that the creditors should have absolute knowledge that their debtors were insolvent nor even that they should have had any belief on the subject. It is only necessary that they should have had reasonable cause to believe that such was the fact; and they must be considered to have had reasonable cause when a state of facts was brought to their notice as would have led prudent business men to conclude that their debtors could not meet their obligations. Toof v. Martin, 13 Wall. 40.

The court concurred in the decision in Jones v. Howland, 8 Metc. 377, as follows. "That though insolvency in fact exists, yet if the debtor honestly believes he shall be able to go on in his business and with such belief pays a just debt without a design to give a preference, such payment is not fraudulent though bankruptcy should afterward ensue; and on the other hand, if the debtor being insolvent and knowing his situation and expecting to stop payment shall then make a payment or give security to a creditor for a just debt with a view to give him a preference over the general creditors, such payment or giving security is fraudulent as against the creditor; and property that is transferred in making such payment or giving the security may be recovered by his assignee and the debtor will not be entitled to a discharge under the statute. It rests upon the intent with which the act was done, and the intent is to be proved as a fact either by direct evidence or as the necessary and certain consequence of other facts clearly proved." Morgan et al. v. Mastick, 2 N. B. R. 521; 17 Fed. Cas. 752.

A client is chargeable with the knowledge of his attorney as to the insolvency of a debtor when the attorney takes a warrant in his own name, and enters judgment thereon. Vogle v. Lathrop, 4 N. B. R. 439; 28 Fed. Cas. 1246.

An attorney who had knowledge of the defendant's insolvency defended a suit on a just debt. Later, as attorney for another creditor, he obtained a judgment by default against the same debtor. Held, that his knowledge of the debtor's insolvency was chargeable to the plaintiff in the second action, and that the judgment in that case amounted to a preference. Wight v. Muxlow et al., 8 Ben. 52; 29 Fed. Cas. 1174.

The words "knowing," and "having reasonable cause to believe," are considered in the cases cited. Singer v. Sloan et al., 3 Dill. 110; 22 Fed. Cas. 201; s. c., 11 N. B. R. 433; 22 Fed. Cas. 202.

The renewal of commercial paper by a merchant carrying on a large business, or the payment under peculiar circumstances at a large discount, does not convey notice of insolvency. Golson v. Neihoff, 2 Biss. 434; 10 Fed. Cas. 569.

A creditor who has commenced an action on the commercial paper of a trader is chargeable with reasonable cause to believe that the debtor is insolvent. Dunning v. Perkins, 2 Biss. 421; 8 Fed. Cas. 104.

The existence of a panic may, of itself, afford reasonable cause to believe debtors who are known to be in embarrassed circumstances to be insolvent. In re Clarke et al., 2 Hughes, 405; 5 Fed. Cas. 939.

It was held necessary in order to set aside a preference under the Act of 1867 that the debtor had reasonable cause to believe that a fraud on the Bankrupt Act was intended. Castle v. Lee, 11 N. B. R. 80; 5 Fed. Cas. 281.

Notice to the creditor of an act of bankruptcy does not vitiate a conveyance made to him except so far as it tends to charge him with reason to believe that the transfer was a fraud on the Bankrupt Act. Catlin v. Hoffman, 2 Saw. 286; 5 Fed. Cas. 307.

A contingent interest in an estate of a decedent became absolute in A. B. C. after his bankruptcy. The executor drew a check for the money and gave it to A. B. C.'s attorney, who delivered it to A. B. C. The attorney had knowledge of his bankruptcy. It was held that the executor had constructive knowledge of the bankruptcy by reason of the actual knowledge of his attorney, and that the assignee in bankruptcy was entitled to a decree against the bankrupt and the executor. Beecher v. Gillespie et al., 6 Ben. 356; 3 Fed. Cas. 57.

Held, that the knowledge of an attorney of the insolvency of a debtor against whom he procures a judgment by default is chargeable to his client, who was the plaintiff in such action. Rogers v. Palmer, 102 U. S. 363.

A married woman who engages in business for herself, and intrusts the management to her husband, is chargeable with his acts, knowledge, and intentions respecting such business. Graham v. Stark et al., 3 Ben. 520; 10 Fed. Cas. 939.

Actions to Set Aside Preferences, Etc.

An assignee may recover payments made in fraud of the Bankrupt Act. Morgan et al. v. Mastick, 2 N. B. R. 521; 17 Fed. Cas. 752.

In the case cited, the provisions in the Bankrupt Act of 1867 which authorized the assignee to recover unlawful preferences were held not to be penal in their nature. Tinker v. Van Dyke et al., 14 N. B. R. 112; 23 Fed. Cas. 1297.

A preference of a *bona fide* creditor made more than four months before commencement of proceedings in bankruptcy cannot be attacked by the assignee. Shearman v. Bingham, Holmes, 272; 21 Fed. Cas. 1212 (1873).

The insolvent debtor is a necessary party to a suit by an assignee to set aside a fraudulent preference. Loving v. Arnold, 84 Fed. Rep. 214.

An assignee cannot set aside a settlement made by a bankrupt less than four months before the adjudication by which a bankrupt returned goods fraudulently obtained by him. Montgomery v. Bucyrus M. W., 92 U. S. 257.

Held, under the Act of 1867, that an assignment by an insolvent debtor of all his property for the benefit of his creditors is not fraudulent. In this case the assignment was made six months before the filing of the petition in bankruptcy, and it was held that the assignee in bankruptcy could not recover the assigned property. Mayer v. Helman, 91 U. S. 496.

A suit to recover money paid to a creditor of a firm under circumstances amounting to a preference must be brought by the assignee of the firm, and not by the assignee of an individual partner. Amsinck v. Bean, 22 Wall. 395.

The bank held stock in an insolvent corporation, and took security from it for money due and for advances, and thereafter made advances on such security. Held, that the bank was bound to account to the unsecured creditors for their *pro rata* proceeds of such securities. Stout v. Yaeger Mill Co., 18 Fed. Rep. 802.

An assignee in bankruptcy may recover money paid by a debtor whom the defendants have reasonable cause to believe to be insolvent, or obtained by them on a judgment within four months next preceding the commencement of the bankruptcy proceedings. West Phil. Bank v. Dickson, 95 U. S. 180.

The day on which the petition in bankruptcy is filed should be excluded in computing the four months under the Act of 1867. Dutcher v. Wright, 94 U. S. 553.

The day on which a petition in bankruptcy is filed must be excluded in computing the period of four months within which an assignment of property is void under certain circumstances. Ibid.

An insolvent debtor transferred certain securities to a creditor with intent to give him a preference, the latter having reasonable cause to believe that the debtor was insolvent. Held, under the facts of the case, that the assignee in bankruptcy could recover the securities or their value from such creditor. Merchants' Nat. Bank v. Cook, 95 U. S. 342.

When an assignee has elected not to attack a deed of the bankrupt, he is estopped by such election from afterward proceeding to set it aside. Laughlin v. Dock Co., 65 Fed. Rep.

Held, that in an action by an assignee in bankruptcy to recover property

under section 39 of the Act of 1867, he must prove that the transfer was made with intent to give a preference, and that the creditor has reasonable ground to believe his debtor to be insolvent. Mays v. Fritton, 20 Wall. 414.

A debtor in Georgia conveyed property to his children. It constituted only a small part of the grantor's estate, and there was no fraud and no purpose to hinder or delay creditors. Held, that an assignee subsequently appointed in bankruptcy proceedings could not impeach the conveyance. Adams v. Collier, 122 U. S. 82.

An assignee in bankruptcy can recover from an acceptor the amount of a draft drawn by a creditor with intent to give a preference. Fox v. Gardner, 21 Wall. 475.

In this case the petition was filed at 9 A. M. on the 14th of March, 1874. It was held that a payment made on the 14th of November, 1873, was not made within four months. Warren et al. v. Garber, 1 Hughes, 367; 29 Fed. Cas. 275.

One partner of a firm died, and within four months the remaining partners, but not the firm, were individually adjudged bankrupts. Held, that the assignee cannot recover any property previously transferred by the firm to a firm creditor by way of preference or otherwise. Withrow v. Fowler, 7 N. B. R. 239; 30 Fed. Cas. 402 (1892).

Certain shares of stock were delivered to the creditor under circumstances which constituted a preference. Held, that the assignee could not retain moneys paid by the preferred creditor to increase the value of the stock, nor actual advances made by him which increased the assets of the bankrupt's estate. Swan et al. v. Robinson, 5 Fed. Rep. 287.

Until after the passage of the Bankrupt Act, nothing but fraud in obtaining a preference could invalidate it, no matter in what manner obtained. In re Wynne, Chase, 227; 4 N. B. R. 23; 30 Fed. Cas. 752 (1868).

The bankrupt had conveyed certain property to his wife, through a third person, when he was insolvent. Certain money belonging to the wife's separate estate had been used in building and furnishing a house upon the land conveyed. It was held that the conveyance must be set aside, but that she was to be regarded as a preferred creditor as to the money of her own expended upon the property. In re Wheeler et al., 5 Fed. Rep. 299.

The assignee in bankruptcy brought a suit to set aside a sale, and enjoin the vendee from prosecuting an action in a state court against the attaching creditor of the bankrupt vendor for the taking of the goods sold. As it appeared that the assignee already had possession of the property, the court said: "The bare fact that the sale was void is no reason for setting it aside as long as the assignee has the property and all that he could obtain in any event by the most successful litigation." Maine v. Bromley et al., 6 Fed. Rep. 477.

A creditor lends money to a debtor believing him solvent, taking as security what may be regarded as a chattel mortgage. He takes possession of the mortgaged goods after he has reason to believe the debtor insolvent, both transactions being within four months of the adjudication

of the debtor a bankrupt. Held, that the assignee in bankruptcy could not recover the goods so taken. Sherman v. Traders' Nat. Bank, 9 Biss. 216; 21 Fed. Cas. 1282 (1879).

Held, that an assignee in bankruptcy seeking to set aside a transaction on the ground that it constitutes an illegal preference, must show by a preponderance of testimony that the debtor was insolvent, or in contemplation of insolvency; that the security was intended to give a preference, and that the creditor had reason to believe the debtor to be insolvent, and that the security was designed as a preference. Crane et al. v. Penny et al., 2 Fed. Rep. 187.

In an action by an assignee in bankruptcy to recover a payment alleged to have been a fraudulent preference, the court said: "It was necessary for the plaintiff to prove *inter alia* that the defendants had reasonable cause to believe that the firm of A. B. & Co. was insolvent, and also that the defendants knew that a fraud on the Bankrupt Act was intended by the payment to them. These are independent facts, and both must concur to sustain the verdict." Metcalf v. Officer et al., 2 Fed. Rep. 640.

The grantee in a conveyance made by an insolvent debtor took the title in trust for a third person, and derived no profit from the transaction, and did not share in the bankrupt's fraudulent intent. Held, that he was not liable to the grantor's assignee in bankruptcy for the value of the land. Alleman v. Kneedler, 2 Fed. Rep. 671.

Payments made by an insolvent debtor to an attorney for necessary services actually rendered cannot be recovered by the assignee in bankruptcy. Triplet v. Hanley et al., 1 Dill. 217; 24 Fed. Cas. 203.

"On a petition in bankruptcy being filed against the bankrupts, who were merchants, they consulted the defendants as attorneys and agreed to pay, or did pay them in cash, merchandise and notes over $1,500 for advice and services in opposing the petition. The bankrupts were known to the attorneys to be hopelessly insolvent and to have committed acts of bankruptcy, and they knew or must be taken to have known that it was useless to oppose proceedings or to incur expense in doing so. We held that the assignee is entitled to judgment against the defendants for the amount thus paid to them less the sum of $200, that being shown to be a fair compensation for all necessary advice and expenditure and services." Ibid.

A creditor will be compelled by proceedings in bankruptcy to return money and property received from his debtor when he knew him to be insolvent; and if he fails to surrender it, he must pay the costs of the proceedings by the assignee, and, under the Act of 1867, could not prove his claim. In re Forsyth et al., 7 N. B. R. 174; 9 Fed. Cas. 465.

In the case of a mortgage made in good faith within four months before the commencement of proceedings in bankruptcy to secure a present loan, it was held that to invalidate it there must be proof that the mortgagee knew that it was made to give him an advantage over other creditors. Campbell v. Waite et al., 9 Ben. 166; 4 Fed. Cas. 1205.

Judge Lowell used the following language: "A preference is valid at

common law and in equity, and is voidable only by an assignee in bankruptcy, and only when proceedings in bankruptcy are begun within four months, or, according to another construction of the statute, within six months, after the act is committed." In accordance with this principle, it was held that the payment of a firm debt does not become a voidable preference unless the partners both become bankrupt within the time limited by the statute. Forsaith v. Merritt et al., 1 Low. 336; 9 Fed. Cas. 464.

Under the Act of 1867, it was held necessary for the assignee to show that a preference was given within four months before the filing of the petition to enable him to recover back the money paid. Hubbard et al. v. Alaire Works, 7 Blatchf. 284; 12 Fed. Cas. 776.

Sections 35 and 39 of the Act of 1867 are to be construed together, and were held to impose a limitation of four months before the filing of the petition in bankruptcy in proceedings to avoid preferences. Collins v. Gray et al., 8 Blatchf. 483; 6 Fed. Cas. 125.

A creditor who held several notes of the bankrupt exchanged them for notes of like amount given by the firm of which the bankrupt was a partner. The court said that while this might be a fraud upon joint creditors, it could not be set aside as the bankruptcy of the firm occurred more than four months later. In re Lane et al., 2 Low. 333; 14 Fed. Cas. 1070.

One partner transferred his interest in the partnership effects to his partner who assumed all the debts of the firm. Five days later, the latter filed a petition in bankruptcy. The transfer was held to be void. In re Byrne, 1 N. B. R. 464; 4 Fed. Cas. 951.

Where the condition of insolvency exists it is not obviated by an agreement of creditors to extend the time of payment. Rison v. Knapp, 1 Dill. 187; 20 Fed. Cas. 835.

An assignee in bankruptcy brought a suit in equity to recover money fraudulently paid by the bankrupt to obtain the signatures of certain creditors to a composition. The court held that the suit could be maintained, though he might have brought an action at law. Bean v. Brookmire et al., 1 Dill. 151; 2 Fed. Cas. 1130.

On the same day that he filed his petition in bankruptcy, the bankrupt mortgaged his property to a creditor, and the creditor assigned to other parties all his interest in the property. It was held that it was immaterial whether the first grantee did or did not know that a fraudulent preference was intended, if it were actually given, and as the second grantee had notice that the grantor had failed, and received it only as collateral security for old claims, it could be recovered by the assignee in bankruptcy of the first grantor. Morse v. Godfrey et al., 3 Story, 364; 17 Fed. Cas. 854 (1844).

A fraud by a bankrupt does not operate as an estoppel upon his assignee in bankruptcy, but a fraud that he can act upon must be one injurious to creditors. Mattox v. Baker, 2 Fed. Rep. 455.

A few days after their suspension, the bankrupts, V. & B., who were

private bankers, left a draft with P. & S., who were also private bankers at the same place, for collection. P. & S. sent it to New York, and upon learning of its payment there, paid the proceeds to one of the bankrupt firm. The assignee brought suit to recover the amount of the draft from P. & S. under the second clause of section 35, Act of 1867. Held, that he could not recover. Borland et al. v. Phillips et al., 2 Dill. 283; 3 Fed. Cas. 909.

Section 39 of the Act of 1867 does not give the assignee any greater rights to recover back money than he has under section 35. Hubbard et al. v. Alaire Works, 7 Blatchf. 284; 12 Fed. Cas. 776.

In an action by an assignee in bankruptcy under section 35 of the Act of 1867 to recover property fraudulently conveyed, the assignee can only recover on the case stated in his pleading, and not on the ground that the conveyance was void at common law or under the statutes of the state. Cragin v. Carmichael et al., 2 Dill. 519; 6 Fed. Cas. 706.

[For a large number of additional notes pertinent to this section, see §§ 8, 67 and 70.]

CHAPTER VII.

ESTATES.

§ 61. Depositories for Money.—(a.) Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time, as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

An assignee failing to deposit money as ordered by the court is liable for interest thereon. In re Newcomb, 32 Fed. Rep. 826.

It was held, under the Act of 1841, that assignees were chargeable with interest on money not paid into the registry of the court within sixty days after it was received. In re Thorp, 4 N. Y. Legs. Obs. 377; 23 Fed. Cas. 1153.

EXPENSES.

§ 62. Expenses of Administering Estates.— (a.) The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

Where the assignee is an attorney-at-law, he cannot claim professional compensation for the ordinary duties of his trust. In re Cook, 17 Fed. Rep. 328.

A marshal having served notices in proceedings brought by an officer of a corporation in its name, applied to the bankrupt court for an attachment to compel such officer to pay his fees. The application was denied, and it was held that he must proceed by an action at law. In re Atlantic M. L. I. Co., 9 Ben. 337; 2 Fed. Cas. 169.

Charges for the employment of a bookkeeper will only be allowed so far as they were necessary in conducting the business of the estate. Where charges are made for a bookkeeper employed partly in the personal business of the assignee and partly in conducting the business of the bankrupt's estate no apportionment will be approved without distinct proof of the necessity and reasonable value of the services rendered to the estate. In re Barnes, 18 Fed. Rep. 158.

Charges for rent of offices used by the assignee will only be allowed so far as they were necessary in the conduct of the business of the estate. Ibid.

The court allowed the expenses of the assignee in finishing the goods for sale when it was clear that the estate would be benefited thereby and that the work would be done in a reasonable time. Foster v. Ames, 1 Low. 313; 9 Fed. Cas. 527.

Under the Act of 1867 an assignee was only allowed to charge for professional and clerical services upon an allowance by the court. In re Noyes, 6 N. B. R. 277; 18 Fed. Cas. 465.

An allowance for services will only be made upon the presentation of a bill after they have been rendered. In re Hughes, 2 Ben. 85; 12 Fed. Cas. 829.

Fees for the services of an attorney may be allowed but not without satisfactory evidence showing that they were actually rendered and that there was a necessity for legal aid. In re Tully, 3 N. B. R. 82; 24 Fed. Cas. 315; In re Cook, 17 Fed. Rep. 328.

It is discretionary with the court whether it shall allow the assignee additional compensation for his services as attorney where such services were rendered in preserving the estate for the creditors. In re Welge, 1 Fed. Rep. 216.

It was held, under the Act of 1867, that where creditors brought a suit against the assignee and were defeated and the estate was insufficient to pay both their costs and the costs and counsel fees of the assignee, the latter was entitled to preference, notwithstanding the creditors proceeded in good faith. Gazin v. Norton, 38 Fed. Rep. 200.

A creditor on whose petition a debtor is adjudged bankrupt is entitled to receive the amount paid his attorney for prosecuting in the proceedings out of the assets of the estate before a dividend is declared; but he is not entitled to expenses for time and money spent in traveling to and from the court and attending the trial. In re King, 4 Biss. 319; 14 Fed. Cas. 503.

[Notes respecting the expenses of administering estates will be found under section 64.]

PROVABLE CLAIMS.

§ 63. **Debts Which May be Proved.**— (a.) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to

prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

(b.) Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

Claims Which Can be Proved.

A claim for infringement of patent is provable in bankruptcy. In re Boston Iron Works, 29 Fed. Rep. 783.

Liability for stock subscription is a provable debt in bankruptcy against the subscriber. Glenn v. Abell, 39 Fed. Rep. 10.

Rent accrued at date of filing the petition may be proved as a debt against the estate. From that time to the surrender of the possession, the assignee should pay the rent. In re Hufnagel, 12 N. B. R. 554; 12 Fed. Cas. 819.

Under the circumstances of the case cited the landlord was permitted to prove against the estate of his tenant's assignee in bankruptcy damages for the breach of the covenant of the lease to pay rent subsequent to adjudication. In re Orne, 12 Fed. Rep. 779.

A debtor in contemplation of bankruptcy procured a friend to buy up a part of his indebtedness at ten cents on the dollar. Held, that the creditors could prove up such claims against the bankrupt's estate, notwithstanding these transactions. In re St. Ins. Co., 16 Fed. Rep. 756.

The bankrupts themselves, as administrators of an estate, may prove an equitable debt arising from a loan of funds from the estate of their decedent, notwithstanding the loan was unlawfully made; and the amount for which the administrators are liable should first be ascertained by a proceeding in probate. Warner v. Spooner, 3 Fed. Rep. 890.

Dealing in "puts" being held in Illinois to be gaming, money actually paid to the bankrupt for "puts" was held to be recoverable on proof of claim in bankruptcy. Ex parte Young, 6 Biss. 53; 30 Fed. Cas. 828 (1874).

The United States court for Maine allowed the proof of a claim for liquor sold to the bankrupt in New York to be resold by the bankrupt in Maine in violation of the prohibitory liquor law, notwithstanding the claim could have been recovered in the courts of Maine. In re Murray, 1 Hask. 267; 17 Fed. Cas. 1041.

The bankruptcy court has nothing to do with rent which accrued after

the bankruptcy. For that which accrued before the commencement of proceedings, the same being a provable debt and secured by lien, the court should entertain jurisdiction. Wylie v. Smith, 2 Woods, 673; 30 Fed. Cas. 732 (1875).

Every debt which a person can, either in his own name or in the name of any other person, recover at law or in equity is a provable debt in bankruptcy. In re Jordan et al., 2 Fed. Rep. 319.

A balance found due on accounts current between merchants is a debt that may be proved in bankruptcy. In re Stanton, 22 Fed. Cas. 1064.

Where a dividend has been declared in favor of a creditor, and he has received it, or has a present right to receive it, under a trust for the benefit of creditors prior to the filing of a petition in bankruptcy, he can prove the full amount of his claim against the estate of the bankrupt. In re Hamilton, 1 Fed. Rep. 800.

A debt arising from the fraud or embezzlement of the debtor is provable in bankruptcy. In re Rundle, 2 N. B. R. 115; 1 Chi. Leg. News, 30; 21 Fed. Cas. 5 (1868).

The purchaser of claims against a bankrupt who bought them with the intention of stopping the proceedings, and to give the debtor further time, may prove such claims and participate in the dividends. It is necessary, however, that he should take an assignment; a receipt of payment is not sufficient. In re Strachan, 3 Biss. 181; 23 Fed. Cas. 212.

Subscriptions in aid of a college may be proved in bankruptcy where the donee had performed its part of the undertaking. Sturges v. Colby et al., 2 Flip. 163; 23 Fed. Cas. 308.

A wife may share in the estate of a bankrupt husband for money that she had allowed him to use in his own business. Van Kleeck v. Miller et al., 19 N. B. R. 484; 28 Fed. Cas. 1025.

It was held in Massachusetts that a woman who lived in that state separate and apart from her husband could become guarantor as to a debt not connected with her business, and that the debt could be proved against her in bankruptcy. In re Ruddell, 2 Low. 124; 20 Fed. Cas. 1305.

Held, under section 19 of the Act of 1867, that a bill for merchandise might be proved, although the debt were contracted by fraud and would not be covered by a discharge under section 33. In re Rosenberg, 3 Ben. 14; 20 Fed. Cas. 1194.

The foundation of voluntary proceedings is indebtedness due and payable under the Act against the debtor. Whatever debts may be proved in voluntary, may be proved in involuntary cases. In re Nickodemus, 2 Chi. Leg. News, 49; 18 Fed. Cas. 222.

After, and not before, the original debt has been proved, the creditor may prove the costs of an attachment suit commenced in good faith, and with no intention to defeat the Act, before the filing of the petition; but costs incurred after the commencement of the bankruptcy proceedings were disallowed. In re Preston, 5 N. B. R. 293; 19 Fed. Cas. 1289.

The claimant had entered into a contract to serve the bankrupt company for ten years, and had taken a bond in the sum of $10,000 for the

performance of the contract on the part of the corporation. It was held that he could have his damages proved and allowed against the estate of the company in bankruptcy, and that it was no objection that they were difficult of assessment. Ex parte Pollard, 2 Low. 411; 19 Fed. Cas. 942.

A debt existing at the time of the adjudication, though not then due, was held to be provable under the Act of 1867. Phelps v. Clasen, Woolw. 204; 19 Fed. Cas. 445.

A creditor was allowed to prove a claim in bankruptcy that he had set up in defense to an action brought against him by the bankrupt, in which action he offered no evidence in support of his defense, and the bankrupt recovered judgment. In re People's Safe & Savings Inst., 10 Ben. 38; 19 Fed. Cas. 212.

The father-in-law of the bankrupt undertook to buy up all of the claims against him to prevent further proceedings. Failing in this, he offered to prove up one of the claims that he had purchased, and the court allowed him to prove it. In re Pease et al., 6 N. B. R. 173; 19 Fed. Cas. 67.

A bankrupt having been discharged by a composition, subsequently gave a note to one of his creditors for his old debt. Having contracted new debts, and gone into bankruptcy again, it was held that the former debt was discharged by operation of law, and hence was a sufficient consideration for the new note; and that the holder of the note should participate in dividends equally with new creditors. In re Merriman, 18 N. B. R. 411; 17 Fed. Cas. 131.

An equitable debt was held to be provable in bankruptcy, under the Act of 1867. In re Blandin, 1 Low. 543; 3 Fed. Cas. 669.

The plaintiff deposited some wheat with the bankrupt before the filing of his petition, and the latter converted it to his own use. Such a debt is a claim or demand provable against the bankrupt's estate, and for which the assignee, as such, cannot be sued, except the same be rejected by the district judge on objections by the assignee, as prescribed in section 23 of the Bankrupt Act of 1867. Adams v. Meyers, 1 Saw. 396; 1 Fed. Cas. 137.

The wife of the bankrupt had received money from her father's estate and placed it in her husband's hands. Subsequently she drew all but $700. Under the circumstances of the case, it was decided that she could prove a claim for that amount, but without interest. In re Bigelow et al., 3 Ben. 198; 3 Fed. Cas. 347.

An insuree of a fire insurance company is entitled to share in the dividends for any loss occurring before the final dividend, notwithstanding the loss occurred after adjudication. In re American P. G., etc., Ins. Co., 12 N. B. R. 56; 1 Fed. Cas. 716.

An insurance policy contained a covenant to repay part of the premium in the event of the cancellation of the policy. A claim founded upon this covenant was held provable in bankruptcy. In re Independent Ins. Co., 2 Low. 187; 13 Fed. Cas. 20.

An administrator who had used the funds of the estate in business of

the firm died, and the firm became bankrupt. Thereafter an administratrix *de bonis non* was appointed. It was held that she could prove the claim against the separate estate of the former administrator, and against the firm. In re Jordan et al., 2 Fed. Rep. 319.

Where the funds of an estate were used by a partnership of which the administrator was a member, with the knowledge of the other partners, it was held that the firm and its members became jointly and severally liable for such funds. Ibid.

A partner who has received a preference may nevertheless be allowed to make proof of firm debts that he has paid or assumed. In re Stephens, 3 Biss. 187; 22 Fed. Cas. 1275.

A firm may prove against the separate estate of one of the members a claim for property of the firm fraudulently converted by such partner; but to warrant such proof there must be something more than a mere abstraction of funds. In re Hamilton, 1 Fed. Rep. 800.

A firm indorses the note of one of its members and becomes bankrupt before its maturity. Held, that no protest or notice of protest is necessary to make the note provable in bankruptcy against the firm, on the ground that the knowledge of the maker is notice to all the parties. In re Paul, 16 N. B. R. 476; 21 Fed. Cas. 30 (1877).

A member of a former copartnership can prove a claim for the fraudulent misappropriation of firm funds as if no partnership existed. Sigsby v. Willis, 3 Ben. 371; 22 Fed. Cas. 112.

The circuit court for the district of New York decided that the owner of several notes all made for firm debts, but some executed by the firm and indorsed by the partners, and others made by the partners, may prove the former against the firm, and the latter against the individual assets. Mead v. National Bank of Fayetteville, 6 Blatchf. 180; 16 Fed. Cas. 1277.

Whether or not there are any firm assets, a copartnership debt can be proved against a single member of the firm on his separate petition. In re Freear, 2 Ben. 467; 9 Fed. Cas. 738.

A. held a note of a bankrupt firm, which it had secured by delivering to him notes of third persons, indorsed by the bankrupts, for an amount greater than the secured note. The firm, and the makers of the notes given as security, became bankrupts. The court decided that the holder might surrender the note of the bankrupt firm, and prove on their indorsements of the collateral notes for the amount of the debt of the bankrupts to him. He might also prove the full amount against the makers of the collateral notes, receiving in dividends only the amount due on the original note. Ex parte Farnsworth, 1 Low. 497; 8 Fed. Cas. 1055.

The general rule in bankruptcy is that there can be no proof of claims between the joint and separate estate of partners, unless there is a surplus of the joint estate to be divided. In re Lane et al., 2 Low. 333; 14 Fed. Cas. 1070.

A married woman furnished the money which was her husband's contribution to the capital stock of a partnership. Under the terms of the

partnership agreement, he received from the firm a note for the amount, and transferred it to her. Held, that she could prove the note as against her husband in bankruptcy, and participate in the dividends of his separate estate, but not in the firm estate. In re Frost et al., 3 N. B. R. 736; 9 Fed. Cas. 967.

Creditors filed separate proofs of the same debt against two former members of a copartnership, which was the original debtor. A motion of the assignee that the proofs be stricken out was denied. In re Beers et al., 5 N. B. R. 211; 3 Fed. Cas. 64.

When a member of a firm converts to its use funds which belong to a corporation of which he was agent, and the misappropriation is known to the firm, the claim of the creditor corporation may be proved both against the individual and the partnership assets in bankruptcy. In re Baxter, 18 N. B. R. 62; 2 Fed. Cas. 1044.

A note signed by a firm and indorsed by one of the partners can be proved against the assets of both in bankruptcy. In re Bradley, 2 Biss. 515; 3 Fed. Cas. 1135.

The owner of negotiable paper who had purchased it after the commission of bankruptcy had been issued under the Law of 1800, may prove it under the commission, subject to all legal offsets. Humpfries v. Blight's Assignee, 1 Wash. C. C. 44; 2 Fed. Cas. 875 (1803).

Under the Act of 1800 it was held that where bankruptcy occurred between the making of a note and the time when it became payable, and the indorser took it up before the final discharge of the bankrupt maker, the indorser could prove it up under the commission. Baker et al. v. Vasse, 1 Cranch C. C. 194; 2 Fed. Cas. 480.

H. & Co. held notes made by the bankrupts in pledge to secure a debt due to them from M. for a much smaller amount than their face value. Held, that they could prove up the full amount of the notes and receive dividends thereon to the extent of their debt which was secured by the notes. Bailey v. Nichols et al., 2 N. B. R. 478; 2 Fed. Cas. 381.

The holder of a bill of exchange may prove his debt in bankruptcy against the drawer, acceptor, and the payee, and receive a dividend from all their estates until his debt is fully paid. If only one is a bankrupt, he may prove his debt against him and proceed against the others at law. In re Babcock, 3 Story, 393; 2 Fed. Cas. 289 (1844).

The holder of two drafts settled with the acceptor for 50 per cent., expressly reserving his rights against all other parties. The acceptor subsequently released the drawer from all liability to him. It was held that the holder could prove the whole amount of the drafts against the estate of the drawers in bankruptcy and receive dividends to the amount of the unpaid balance of 50 per cent. In re Baxter, 18 N. B. R. 497; 2 Fed. Cas. 1045.

The holder for value of an accommodation bill of exchange before maturity is entitled to prove his claim in bankruptcy against all the parties whom he could have sued on the bill. Downing v. Traders' Bank, 2 Dill. 136; 7 Fed. Cas. 1008.

An accommodation acceptor of a bill drawn by the bankrupt made a partial payment to the holder after the bankruptcy of the drawer. Held, that the acceptance of this payment by the holder of the bill did not impair his right to prove his claim against the estate of the drawer in bankruptcy for the full amount due at the time of the adjudication. Ibid.

Accommodation notes indorsed by the bankrupt had been deposited with a creditor as collateral security before they were due, and without notice that there was any defense. Held, that the creditor was a *bona fide* holder for value before maturity, and that the notes could be proved against the estate of the indorser in bankruptcy. Fogg v. Stickly, 11 N. B. R. 167; 9 Fed. Cas. 334.

The holder of an indorsed note had received part payment from the indorser. He was allowed to prove the whole amount of the note against the maker in bankruptcy, the court holding that any surplus he received over the amount of the note, he held in trust for the indorser. In re Ellerhorst et al., 5 N. B. R. 144; 8 Fed. Cas. 522.

Held, that a creditor to whom property had been transferred to secure a debt on an extension of time to the debtor had a claim that might be proved in bankruptcy before the expiration of such time. Ecfort et al. v. Greely, 6 N. B. R. 433; 8 Fed. Cas. 279.

Where promissory notes were hypothecated for value before maturity, the pledgee can prove them for their full amount against the makers in bankruptcy. If, however, such equities exist that the pledgor could not have proved them, then the pledgee can receive in dividends only the amount which they secured. Ex parte Kelty et al., 1 Low. 394; 14 Fed. Cas. 277.

The agent of a company indorsed certain acceptances belonging to the company to the use of the bankrupt firm, of which he was a member. The latter indorsed the same, and had them discount it, making use of the proceeds. Held, that both the company and the bank which discounted the paper might prove claims in bankruptcy against the firm, and that the bank must give credit for whatever it received, and if it recovered the whole amount from the maker or acceptor of the paper, it should stand as trustee to the estate of the bankrupt for so much as it had obtained. In re Morse et al., 11 N. B. R. 482; 17 Fed. Cas. 850.

G. & H. had made notes which were indorsed by the bankrupts. The makers (G. & H.) were adjudged bankrupts and effected a composition with their creditors for certain payments to be made in three, six, and nine months. The creditor was offered the composition notes, but refused to accept them. The indorsers having been adjudged bankrupts, the holder of the notes proved their claims for the whole amount against the estate of the indorsers. Later he accepted cash for the first note, which had fallen due, and the two other notes. A motion was made to reduce the proof of debt. The court denied the motion on the ground that the creditor had not received or become entitled to receive anything in part payment of the debt at the time of his proof against the estate of the indorsers. In re Heck et al., 19 N. B. R. 299; 12 Fed. Cas. 113.

Held, that a bank could prove its claim directly against the company for moneys which a stockholder had fraudulently drawn out of the bank by collusion with the cashier, and given to the company. In re Eureka Mfg. Co., 1 Low. 500; 8 Fed. Cas. 832.

A firm borrowed money and gave its note which was also signed by three persons, not members of the copartnership, as sureties. It was held that this could be proved against the joint estate of the firm in bankruptcy; but that another note which was signed by the members of the firm as individuals, and by three others, could not be proved as a claim against the firm. In re Holbrook et al., 2 Low. 259; 12 Fed. Cas. 317.

The claim of an attorney for services rendered before adjudication must be proved up against the bankrupt in the usual form. The assignee may pay for services rendered after the adjudication, if they were properly and necessarily rendered in the interest of the general creditors. In re Jaycox et al., 7 N. B. R. 140; 13 Fed. Cas. 398.

It was held in Illinois that after the adjudication of the maker of a promissory note in bankruptcy, the holder could proceed at once against the indorser. The court so held, notwithstanding the contention of opposing counsel that the holder should pursue the estate of the maker in bankruptcy, in analogy to the practice where the principal's estate is in the hands of a probate court. National Bank of Commerce v. Booth, 5 Biss. 129; 17 Fed. Cas. 1202.

Claims Which Cannot be Proved.

Held, under the Act of 1867, that a debt incurred after the commencement of proceedings could not be proved. In re Merrell, 19 Fed. Rep. 874.

Held, that a tax is not a provable debt under the Act of 1867 (section 5101, R. S.). In re Duryee, 2 Fed. Rep. 68.

Claims arising under a right of dower while the husband is still living were held not to be provable, under the Act of 1841. Riggin v. Magwire, 15 Wall. 549.

An engagement that left it uncertain whether an actual liability would ever arise between the parties was held not to be provable under section 5 of the Act of 1841. Ibid.

An assessor of internal revenue sought to collect from an assignee in bankruptcy taxes for selling goods of the bankrupt in the course of his trust. Held, that he could not recover. In re Whipple File Co., 1 Low. 477; 29 Fed. Cas. 944.

Under the Act of 1867 a broker was not allowed to prove a claim for losses which he had suffered on contracts made as the agent of the bankrupt, but in his own name, which contracts the bankrupt had refused to carry out. In re Smith, 6 Ben. 187; 22 Fed. Cas. 388.

Costs and counsel fees incurred and paid by the petitioning creditors are not a provable debt, and cannot be added to raise their claim to the jurisdictional limit. In re Skelly, 3 Biss. 260; 22 Fed. Cas. 272.

The claimant had taken an assignment of a proved claim as security

for an existing debt due to him from the creditor. Held, that he was not a purchaser for value, and could not prove the claim against the true owner. In re Sime et al., 3 Saw. 305; 22 Fed. Cas. 147.

Where a creditor obtained judgment after the commencement of proceedings in bankruptcy without leave of the court of bankruptcy, he cannot prove the claim founded upon such judgment. In re Maybin, 15 N. B. R. 468; 16 Fed. Cas. 1221.

A creditor had loaned money to the bankrupt to enable him to leave the state with intent to defraud his creditors. Held, that such a claim could not be proved. In re Hatje, 6 Biss. 436; 11 Fed. Cas. 823.

The United States, in seeking to enforce a claim against a vessel, took a release bond, and subsequently entered judgment on the same. It was held that it thereby waived its right to prove its claim in bankruptcy against the obligor. In re Mansfield, 6 N. B. R. 388; 16 Fed. Cas. 600.

A petitioner in voluntary bankruptcy reported upon his schedule only two debts which were in the form of judgments, one for seduction and the other for the support of his bastard child. It was held that these were not debts within the first section of the Bankrupt Act of 1841. In re Cotton, 2 N. Y. Leg. Obs. 370; 6 Fed. Cas. 617 (1843).

An obligation as surety on a bond was held not to be a liability within section 35 of the Act of 1867, prior to its forfeiture. Corbett v. Woodbury, 5 Saw. 403; 6 Fed. Cas. 531.

A court of bankruptcy will not stay proceedings to enforce the payment of alimony for the reason that it is not a provable debt. In re Lachemeyer, 18 N. B. R. 270; 14 Fed. Cas. 914.

A party who purchased a note of the bankrupts for less than its face, acting as their agent, cannot prove the balance. In re Lathrop, 3 Ben. 490; 14 Fed. Cas. 1170.

A claim for the price of liquor sold to the bankrupt in violation of a state law is not provable in bankruptcy. In re Paddock, 6 N. B. R. 132; 18 Fed. Cas. 973 (1872).

An option, commonly known as a "put," is a gaming contract, and void as against public policy, and cannot be proved as a debt in bankruptcy. In re Chandler, 9 N. B. R. 514; 5 Fed. Cas. 443.

Contracts of sale that are intended to be settled, not by the actual delivery of the property, but by paying the difference in price at some future time, are gambling contracts, and the proof on a note for an indebtedness growing out of such transactions was expunged on motion of the assignee in bankruptcy. In re Green, 7 Biss. 338; 10 Fed. Cas. 1084.

A court of bankruptcy will not allow proof of a claim of brokers carrying stock on a margin who might have sold at a profit at the time of the commencement of the proceedings, but had subsequently closed it out at a loss. In re Daniels, 6 Biss. 405; 6 Fed. Cas. 1167.

To charge an indorser on a demand note, demand must be made within a reasonable time. After a lapse of four years, a claim of this kind cannot be proved against the estate of a bankrupt indorser. In re Crawford, 5 N. B. R. 301; 6 Fed. Cas. 771.

A creditor was allowed to prove his original debt as a claim, notwithstanding the entry of a judgment in his favor by a justice of the peace for the same indebtedness. In re Vickery, 3 N. B. R. 696; 28 Fed. Cas. 1173.

Judgments for torts or in actions *ex contractu* were held to be provable in bankruptcy, under the Act of 1841. In re Comstock, 5 Law Rep. 163; 6 Fed. Cas. 231 (1842).

A judgment against the principal debtors and a surety will not prevent the creditor proving his claim against the principal debtors in bankruptcy. In re Kintzinger et al., 19 N. B. R. 152; 14 Fed. Cas. 709.

Before the filing of a petition, a judgment had been recovered against the bankrupt in a state court and he had appealed. Held, that the judgment was conclusive as against the bankrupt to enable the creditors to prove it as a debt. In re Leszynsky, 3 Ben. 487; 15 Fed. Cas. 397.

A claim may be proved in bankruptcy, notwithstanding judgment was entered upon it after the commencement of the proceedings. In re Brown, 5 Ben. 1; 4 Fed. Cas. 328.

A debt that existed at the time of the filing of the petition in bankruptcy was subsequently, and before the adjudication, reduced to a judgment. The district court for the eastern district of Michigan held that the judgment represented the same debt in another form, and might, therefore, be proved in bankruptcy. In re Crawford, 3 N. B. R. 698; 6 Fed. Cas. 766.

An action for personal injuries was commenced against the bankrupts prior to the filing of the petition, and was prosecuted to judgment without leave of the court in bankruptcy. It was held that the claim was provable against the estate. In re Hennocksburgh et al., 6 Ben. 150; 11 Fed. Cas. 1136.

An assignee in bankruptcy recovered from a creditor the amount that he had collected by judgment and execution, whereupon the creditor filed proof of his debt. The court allowed the proof to stand upon ascertaining that there was more than enough money in the estate to pay all other creditors in full, holding that the creditor had a right to all surplus as against the bankrupt. In re McGuire, 8 Ben. 452; 16 Fed. Cas. 133.

Held, that the United States could prove a claim for the value of goods, notwithstanding a judgment of forfeiture of the same goods for violation of the customs revenue laws had previously been rendered. In re Vetterlein et al., 13 Blatchf. 44; 28 Fed. Cas. 1170.

A creditor had recovered a judgment against the bankrupt, who claimed that it was less than was due. His claim to have the judgment set aside, and to recover the amount really due, was held to be a provable debt in bankruptcy proceedings. In re Van Buren, 19 N. B. R. 149; 28 Fed. Cas. 953.

Judge Lowell, of the district court of Massachusetts, used this language: "Upon a careful examination of the decisions, I am of opinion that a judgment obtained after the adjudication in bankruptcy creates a new debt which cannot be proved in bankruptcy, and that the judgment creditor

cannot oppose the discharge because he has no provable debt, and because the discharge will be no bar to the judgment." In re Gallison et al., 2 Low. 72; 9 Fed. Cas. 1009.

"A debt upon which a judgment of law is founded is merged in that judgment, and extinguished by it, and the judgment constitutes a new debt which takes its date from the time of the recovery. The debt, therefore, of L. N. B. & Co., upon which their suit was brought against the bankrupt, was extinguished by the judgment which they obtained. It no longer existed. It has had no existence since the rendition of that judgment, and can never again be called into life. The judgment itself constitutes a debt, and it had no existence at the time of the adjudication of bankruptcy, and is not, therefore, provable against the bankrupt's estate." In re Williams, 2 N. B. R. 229; 29 Fed. Cas. 1325.

A claim for damages for tort is not a provable claim in bankruptcy, unless put in judgment against the bankrupt individually before adjudication, in which case it could be proved. In re Schuhardt, 8 Ben. 585; 15 N. B. R. 161; 21 Fed. Cas. 739 (1876).

A judgment for a fine imposed upon the bankrupt as a punishment prescribed by law for the commission of a crime of which he had been duly convicted, was held not to be provable in bankruptcy. In re Sutherland, Deady, 416; 23 Fed. Cas. 456.

Damages for a tort cannot be proved against the estate of a bankrupt until they have been assessed. In re Bailey et al., 2 Woods, 222; 2 Fed. Cas. 362.

A verdict in an action for tort, no judgment therein having been entered, cannot be proved in bankruptcy, nor can a judgment in such an action entered after the filing of the petition in bankruptcy. In re Black v. McClellan, 12 N. B. R. 481; 3 Fed. Cas. 504.

Where by the terms of a lease the rent of the bankrupt is payable monthly, it was held that the landlord could not prove a claim for any rent accruing after the filing of the petition. In re May et al., 7 Ben. 238; 16 Fed. Cas. 1205.

Damages for the nonperformance of the terms of a lease cannot be proved against an estate in bankruptcy. In re Hufnagel, 12 N. B. R. 554; 12 Fed. Cas. 819.

A landlord cannot prove the loss of rent accruing after the bankruptcy of his tenant, either as a debt or as unliquidated damages. Ex parte Houghton et al.; in re Fortune, 1 Low. 554; 12 Fed. Cas. 584.

Rent which accrued after the adjudication cannot be proved or allowed against the estate of the tenants in bankruptcy. Bailey v. Loeb et al., 2 Woods, 578; 2 Fed. Cas. 376.

A landlord cannot prove against the estate of the bankrupt lessees unliquidated damages under a lease which authorizes him to relet the premises, the lessees remaining liable for the rent, and being credited with the sum actually realized. Ex parte Lake et al., 2 Low. 544; 14 Fed. Cas. 942.

The bankrupt had leased a stand for five years at a fixed rental. After

two years they demanded an increase of the rent, and, upon the refusal of the tenants to pay it, they evicted them. The evicted tenants sought to prove a claim against the estate of the lessees in bankruptcy. The court held that probable profits are inadmissible as a measure of damages. In re Leland et al., 8 Ben. 254; 15 Fed. Cas. 291.

A landlord having re-entered and relet the leased premises under authority conveyed in the lease, sought to prove a claim, not only for rent due at the time of the bankruptcy, but the amount of the deficiency in the rent for the whole term of the lease. He was only allowed to prove the rent due at the time of the bankruptcy; but the court added that there might be a valid claim for the value of the use and occupation of the premises by the assignee after the commencement of the proceedings. In re Croney et al., 8 Ben. 64; 6 Fed. Cas. 863.

A note given to a married woman before marriage passes to her husband upon her marriage under the common-law rule, and the subsequent passage of a separate property act does not abrogate his interest. When he collects and retains the money on such a note, the wife cannot prove the amount against him as a claim in bankruptcy. In re Jones, 6 Biss. 68; 13 Fed. Cas. 927.

Held, under the Act of 1867 (section 5070, R. S.), that the payment of a part of a debt by a surety does not admit proof of the same against the principal until the creditor is paid in full. In re Hollister, 3 Fed. Rep. 452.

The insolvent maker of accommodation notes can only prove the amount of the dividend actually paid by him against the estate of the bankrupt payee. In re Sterling et al., 1 Fed. Rep. 167.

The indorser of a note made by the bankrupt proved his claim. Later the first note was taken up, and a new one given. The court thereupon ordered the proof to be stricken out. In re Montgomery, 3 Ben. 567; 17 Fed. Cas. 621.

The indorser paid a note made by the agent of a company, the proceeds of which went to the use of a bankrupt firm of which he was a member. The indorser proved the claim in bankruptcy, and recovered judgment against the company. The court held that the company could not also prove the claim. In re Morse et al., 11 N. B. R. 482; 17 Fed. Cas. 850.

B., to whom certain notes had been sent for discount, failed to pay the drafts drawn upon him for the proceeds. His claim in bankruptcy against the indorser of the notes was rejected. In re Howard, 6 N. B. R. 372; 2 Fed. Cas. 628.

Where a creditor accepts a sum less than the amount of his debt in full satisfaction, the debt is discharged by that transaction, and no claim can be made by his legal representatives against the estate of the debtor in bankruptcy. Bank of N. C. v. Dewey, 19 N. B. R. 314; 2 Fed. Cas. 670.

The laws of New York forbade a savings bank to discount commercial paper, and provided that notes so discounted should be void, and that the money so loaned or paid on the discount of the notes could not be recovered

back. A savings bank that had discounted such paper proved up its claim before the register. The court ordered the proof to be expunged. In re Jaycox et al., 13 Blatchf. 70; 13 Fed. Cas. 393.

The bankrupt, who was indebted to A., was garnished before the filing of the petition, and defaulted. A. proved his debt against the bankrupt, and later attaching creditors, having obtained judgment and issued execution, proved up the debt due to A. against the bankrupt by virtue of the garnishment. On application, the proof was expunged, the court holding that they were not creditors of B. at the date of the bankruptcy. Ex parte Columbian Ins. Co., 2 Low. 5; 6 Fed. Cas. 176.

A member of a firm procured the bankrupt to make two notes, payable to the firm, for his accommodation, promising that the firm would pay them at maturity. The notes were indorsed with the firm name by the partner who procured them, and he discounted them at the bank and used the proceeds. Another partner, who had no knowledge of the transaction at the time, paid the notes, and made proof of them in bankruptcy against the estate of the maker. The court decided that the latter was bound by the knowledge of his partner that the bankrupt had received no consideration for the notes, and that the proof of the claim must be expunged. Capelle v. Hall, 12 N. B. R. 1; 5 Fed. Cas. 34.

It was held to be a violation of the Bankrupt Act of 1867 for one member of an insolvent firm to give a note without the consent of his partners. Such a note cannot be proved in bankruptcy against the estate of the copartnership. In re Golder, 2 Hask. 28; 10 Fed. Cas. 547.

Following the recent English rule that the accommodation maker of a note is entitled to the rights of a surety, as respects a holder with notice, Judge Dillon affirmed a decision of the district court expunging proof on such a note against the accommodation maker who had been discharged by an extension of time to the principal. In re Goodwin, 5 Dill. 140; 10 Fed. Cas. 617.

A note having been proved against the bankrupt indorser, and it appearing that an extension of time had been given to the principal, the proof was ordered to be expunged. In re Granger et al., 8 N. B. R. 30; 10 Fed. Cas. 958.

One partner signed the firm name to a note and indorsed it individually. It was payable on demand. No demand was made for five years. Held, that the note could not be proved against the indorser in bankruptcy. In re Grant et al., 6 Law Rep. 158; 10 Fed. Cas. 970 (1843).

L. and D. were members of a firm which was bound by the covenants of a lease to pay rents for several years. They retired from the firm, which was reorganized, and the new firm became bankrupt. L. and D. offered to prove a claim against the estate growing out of their liability on the covenants of the lease, but the proof was rejected by the court. Ex parte Lake et al., 2 Low. 511; 14 Fed. Cas. 942.

When a holder of a note has received partial payment from the maker before proving his claim against the indorser, he can prove only the balance. Ex parte Harris et al., 2 Low. 568; 11 Fed. Cas. 606.

A partner cannot prove his claim against a bankrupt firm of which he is a member in competition with other creditors of the firm; nor when the members of one firm are all partners in another firm which becomes bankrupt can they prove their claims in bankruptcy against such firm. In re Savage, 16 N. B. R. 368; 21 Fed. Cas. 545 (1878).

A member of a firm insolvent at the time drew money from its assets for private use. Held, that the assignee in bankruptcy of the firm could not prove the money so drawn as a claim against his separate estate. In re May et al., 19 N. B. R. 101; 16 Fed. Cas. 1209.

A member of a firm sold his interest in his business to his copartner, and at the same time assumed all the firm debts. Later he became a bankrupt. It was held that the copartner, who had not paid anything on such debts, could not prove any claim against the estate. In re Phelps, 9 Ben. 286; 19 Fed. Cas. 435.

Certain creditors signed an agreement with the debtor that if he would give them notes for 50 per cent. of their claims, they would release him from the balance, provided that the agreement was signed by all of the principal creditors. He gave the notes and paid two of them. Proceedings in bankruptcy were then commenced against him, and one of the signing creditors (a corporation) filed proof for the whole amount of its original debt on the ground that the agreement had not been signed by all the principal creditors. Held, that it was estopped by having accepted the notes, and that the proof must be reduced to the amount of the unpaid notes. In re Decker, 8 Ben. 81; 7 Fed. Cas. 324.

The holder of an indorsed note signed a consent to the discharge of the maker, who was not able to pay the percentage of his debts required by the Bankrupt Act of 1867. Subsequently, the indorser was adjudicated a bankrupt, and the holder sought to prove the note as a claim against his estate. The proof was rejected on the ground that he had released the indorser. Quoting section 5118, R. S., the court said: "I think that this section of the bankrupt law only applies to a discharge in bankruptcy merely, and cannot be held to refer to or have in view any of the parties having a release of liabilities at common law or in equity." In re McDonald, 14 N. B. R. 477; 16 Fed. Cas. 36.

The assignee in bankruptcy sought to expunge the proof of a claim arising on notes which the holder had purchased at a discount exceeding lawful interest, and set up that the notes were accommodation paper. One member of the bankrupt firm had stated to the holder that the notes were commercial paper. The court held that there must be very clear proof that the notes were made or indorsed for accommodation only, and that at all events the firm, and their assignee in bankruptcy, were estopped from setting up that it was accommodation paper by the representation of one of the partners to the contrary. In re Many et al., 17 N. B. R. 514; 16 Fed. Cas. 676.

The bankrupt had been in the habit of indorsing accommodation notes for C. To secure these indorsements, C. gave him five notes, amounting to over $5,000. The bankrupt, who had paid nothing on the notes

indorsed for C., indorsed and transferred C.'s notes to D. H. for about $1,000, and D. H. sold them to B. for property of about that value. At that time they were all past due except one. B. seeking to prove up the notes against the estate of the bankrupt, the court held that until the bankrupt had been called upon to pay the notes he had indorsed for C.'s accommodation, they could not be proved up by any one holding them without paying a valuable consideration, or with notice that there was no consideration therefor; that D. H. was chargeable with notice under the particular circumstances of the case, and that B. did not stand in any better position than D. H. In re Hook, 11 N. B. R. 282; 12 Fed. Cas. 463.

The plaintiff brought suit against the assignee in bankruptcy of E. & B. on an accommodation indorsement. Held, the fact that the maker discounted the note at the plaintiff bank was notice that the indorsement was for accommodation only, and that it was obligatory upon the bank to ascertain whether one partner was authorized to sign the firm name as an accommodation indorser. Lemoine v. Bank of North America, 3 Dill. 44; 15 Fed. Cas. 309.

A bankrupt who had bought oats for customers on margins, and agreed to hold it, sold it without their knowledge. Soon after he became bankrupt. About a year afterward, the customers brought a suit against the assignee in bankruptcy for damages. The question being upon the measure of damages, it was held that the plaintiffs could not recover for any rise in price subsequent to the bankruptcy. Lehman et al. v. Smith, 15 Fed. Cas. 258.

A note given by a partner in the course of his separate business, the proceeds of which were not received by the firm, cannot be proved in bankruptcy against the joint estate even though it was signed in the firm name. In re Forsyth et al., 7 N. B. R. 174; 9 Fed. Cas. 465.

A creditor who has sold a note of the bankrupts to a purchaser in their behalf, at a discount, cannot prove the balance against the estate. In re Lathrop, 3 Ben. 490; 14 Fed. Cas. 1170.

Statutes of Limitations.

A court of bankruptcy will be governed by state statutes of limitation where they are properly applicable. In re Eldridge et al., 2 Hughes, 256; 8 Fed. Cas. 414.

A debt cannot be proved in bankruptcy which is barred by the law of the state in which the petition is filed. In re Kingsley, 1 Low. 216; 14 Fed. Cas. 587.

The law of the state where the bankrupt resides fixes the limitations, without respect to the residence of the creditor. In re Hardin, 1 Hask. 163; 11 Fed. Cas. 488.

The law of limitations of a state where the bankrupt resides is held to apply to proof of a claim in bankruptcy. Nicholas v. Murray, 5 Saw. 320; 18 Fed. Cas. 174.

A demand being barred by the statute of limitations of the state where the bankrupt resides and thereby extinguished, is, therefore, not provable against the estate of the bankrupt. (Citing In re Kingsley, Fed. Cas. No. 7819; In re Hardin, id. 6048; In re Sheppard, id. 1273; In re Ray, id. 11589.) In re Noesen, 7 Chi. Leg. News, 419; 18 Fed. Cas. 294.

No debt can be proved in bankruptcy on which an action could not be maintained against the bankrupt in the state where the petition is filed if proceedings in bankruptcy had not been instituted. So held in a case where the claim sought to be proved consisted of two notes barred by the statute of limitations of Minnesota. In re Doty, 16 N. B. R. 202; 7 Fed. Cas. 957.

Judge Blodgett said: "I shall allow the defense of the state statute of limitations by the assignee to the claim of a creditor seeking to prove his debt in bankruptcy wherever that defense might have been made in a suit in the state where the debtor resides." In re Reed, 6 Biss. 250; 20 Fed. Cas. 408.

Federal courts sitting within their respective states regard their statutes of limitations, and give them the interpretation and effect which they received in the courts of the state. In re Noesen, 7 Chi. Leg. News, 419; 18 Fed. Cas. 294 (1875).

It was held in the case cited that a debt might be proved in bankruptcy though barred by the statute of limitations of the state where the bankrupt resides. In re Shepard, 1 N. B. R. 439; 21 Fed. Cas. 1250 (1868).

Referring to the Law of 1867, Judge Blatchford said: "No provision is found in the act which destroys the provability of a debt because it is barred by the statute of limitations of one state." In re Ray, 2 Ben. 53; 20 Fed. Cas. 322.

A debt which is barred by the statute of limitations, but which was included in the debtor's schedules, may be proved and allowed. In re Hertzog, 18 N. B. R. 526; 12 Fed. Cas. 59.

The fact that a bankrupt entered a debt on his schedule which was barred by the statute of limitations will not revive it. In re Kingsley, 1 Low. 216; 14 Fed. Cas. 587.

A debt barred by the statute of limitations is not revived by entering it on the bankrupt's schedule of liabilities. In re Hardin, 1 Hask. 163; 11 Fed. Cas. 488.

The period between the commencement of proceedings and the order denying a discharge is not included or considered in determining the statutory limitation of claims against the bankrupt. Hall v. Greenbaum, 33 Fed. Rep. 22.

The statute of limitations will not run against a party having a cause of action against the bankrupt while the right of action was suspended on account of proceedings in bankruptcy. Greenwald v. Appell, 17 Fed. Rep. 140.

Where the bar of a statute of limitations is not complete before adjudication, it does not commence to run. In re Graves, 9 Fed. Rep. 816; In re McKinney, 15 id. 912.

The running of the statute of limitations is stopped by the filing of a petition in bankruptcy. In re Maybin, 15 N. B. R. 468; 16 Fed. Cas. 1221.

The court put the proposition that the statute of limitations ceases to run against the creditor of a bankrupt at the commencement of the proceedings on two grounds: First, that the filing of the petition, and the including of the debt in the schedules by the debtor, is a new promise; second, that the effect of the adjudication in bankruptcy is to vest the assets in the assignee as a trust, against which the statute of limitations will not run. In re Eldridge et al., 2 Hughes, 256; 8 Fed. Cas. 414.

Claims provable and not barred by the statute of limitations when the proceedings in bankruptcy are commenced must remain provable after the period of limitation has expired. In re Wright, 6 Biss. 317; 30 Fed. Cas. 661 (1875).

The statute of limitations may be waived, and when relied on as a defense must be set up by the debtor; hence a claim may be proved in bankruptcy notwithstanding it appears on its face that it is barred by the statute. In re Knoepfel, 1 Ben. 398; 14 Fed. Cas. 783.

Usury as a Defense.

A defense on the ground of usury is not open to an assignee in bankruptcy. In re Kintzinger et al., 19 N. B. R. 152; 14 Fed. Cas. 709.

Notes given for excess of interest over legal interest are not provable in bankruptcy. Shaffer v. Fritchery, 4 N. B. R. 548; 21 Fed. Cas. 1147 (1871).

When an assignee seeks relief from a contract of the bankrupt on the ground of usury, he must tender the amount borrowed, and he will then be released from the usurious overplus. Under the laws of Wisconsin the right to avoid such a contract was held to be confined to the borrower. Bromley v. Smith et al., 2 Biss. 511; 4 Fed. Cas. 209.

A creditor seeking to prove a debt is in the position of one who brings a suit in an action at law. Upon the tender of such proof, the assignee can oppose the same on the ground of usury. It was held under the laws of Illinois, if the debt was usurious, the claimant forfeits the whole interest. In re Prescott, 5 Biss. 523; 19 Fed. Cas. 1286.

Where a bank charged a higher rate of interest than its charter allowed, but the charter failed to prescribe a penalty, it was held that a contract with excessive interest was only void as to the excess. Where the note was paid, neither the borrower nor his assignee in bankruptcy could recover the principal. Darby v. Boatman's Sav. Inst., 1 Dill. 141; 6 Fed. Cas. 1179.

In the case of a claim founded on a note tainted with usury under the laws of the state, Judge Deady, of the district court of Oregon, used this language: "Because this court may not have jurisdiction to enforce all the penalties consequent upon this illegal transaction by the laws of the state, it by no means follows that it cannot inquire into its legality when the question arises in a proceeding duly before it. This court has express jurisdiction to allow or disallow claims against the estate of a bankrupt,

and in so doing must determine their legality. According to the law of this state, this claim is illegal, and must, therefore, be rejected." In re Pittock, 2 Saw. 416; 19 Fed. Cas. 745.

When Interest Will be Allowed.

Interest will be allowed upon a claim which accrued after the commencement of proceedings. In re Bonsfield & Poole M. Co., 17 N. B. R. 153; 3 Fed. Cas. 1016.

When creditors objected to a claim, and thereby caused delay in the payment of a dividend, the creditor should be allowed interest from the time the dividend became payable. In re Kintzinger et al., 19 N. B. R. 238; 14 Fed. Cas. 713.

When there is sufficient money belonging to the estate for the payment of all the debts, any surplus may be applied to the payment of interest from the filing of the petition to the time when the principal was paid. In re Hagan, 6 Ben. 407; 11 Fed. Cas. 154.

The assignee having sold certain real estate of the bankrupt discharged of liens, the court ordered him to allow interest on the lien claims to the date of making his report of distribution. In re Devore, 16 N. B. R. 56; 7 Fed. Cas. 570.

A surplus in the hands of the assignee after the payment of all debts will be applied to the payment of interest, computed from the day of adjudication. In re Town et al., 8 N. B. R. 40; 24 Fed. Cas. 85.

As a general rule, interest on a claim ceases with the adjudication in bankruptcy; but a secured creditor can apply the proceeds of his security to the payment of principal and interest until paid, when it is so provided in the contract. In re Haake, 2 Saw. 231; 11 Fed. Cas. 134.

Under the Act of 1867 the provable debts against a bankrupt include interest from maturity until adjudication, and when the interest is not payable until after the time of adjudication, interest from that time until maturity should be deducted in making proof of claim. In re Orne, 1 N. B. R. 79; 18 Fed. Cas. 821 (1867).

Miscellaneous.

The court considers and construes section 14 of the Act of 1867 relating to contingent liabilities of the bankrupt. U. S. v. Throckmorton et al., 8 N. B. R. 309; 28 Fed. Cas. 158.

Courts of bankruptcy will respect the statute of frauds of the states where the transactions occur. Edmondson v. Hyde, 2 Saw. 205; 8 Fed. Cas. 324.

The finding as a jurisdictional fact that the petitioning creditor has a valid claim to a certain amount does not conclude the assignee or creditors from contesting his right to participate in the assets. In re Cleveland Ins. Co., 22 Fed. Rep. 200.

Where a note is given in renewal of another, the bankrupt will be per-

mitted to show how and when the indebtedness represented by the first note originated. In re Perkins et al., 6 Biss. 185; 19 Fed. Cas. 237.

A certificate of deposit issued by private bankers ceases to be negotiable paper upon the commencement of proceedings in bankruptcy. In re Sime et al., 3 Saw. 305; 22 Fed. Cas. 147.

A waiver of the performance of conditions by a fire insurance company while solvent is binding on its assignee in bankruptcy. In re Firemen's Ins. Co., 3 Biss. 462; 9 Fed. Cas. 72.

Where a loss by fire has been adjusted by the company and the insuree before the filing of a petition in bankruptcy against the former, it operates as a waiver of the limitation. Ibid.

A provision in a policy of fire insurance limiting the right of action to one year, is binding upon the bankrupt company; but it is complied with by proof of the debt in bankruptcy within that period. Ibid.

The holder of a note who has received a partial payment from an indorser should prove the note in full against the bankrupt maker. Any dividends that he receives above the balance due, he must hold for the benefit of the indorser. In re Souther, 2 Low. 320; 22 Fed. Cas. 815.

The bankrupt had made a contract by which he purchased certain goods to be delivered in installments and paid for as delivered. While insolvent, he called for an installment with no intention to pay for the same. It was held that the indebtedness accrued when the goods were delivered. Aimes v. Moir, 138 U. S. 306.

A bankrupt indorser is liable only for the balance due on notes indorsed by him after deducting the amount paid by the original debtor. In re Pulsifer, 14 Fed. Rep. 247.

On the foreclosure of a first mortgage on the property of the bankrupt, it was bought by the second mortgagee. The court refused to order the assignee to pay to the purchaser, out of the bankrupt's estate, money collected as rents of the mortgaged premises prior to the foreclosure, and also rejected a claim of the purchaser for taxes paid out of his purchase money. In re Foster, 6 Ben. 268; 9 Fed. Cas. 523.

Claims of attorneys for services in preparing a petition and schedules should be proved against the estate in the same manner as other claims against the bankrupt. In re Gies, 12 N. B. R. 179; 10 Fed. Cas. 339.

[See notes to §§ 59 and 64.]

DEBTS HAVING PRIORITY.

§ 64. **Debts which have Priority.**— (a.) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b.) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

(c.) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

Costs of Preserving the Estate.

The costs of a marshal under section 47 of the Act of 1867 could only be allowed if they were just and reasonable, and had been actually incurred and paid. In re Lowenstein et al., 3 Ben. 422; 15 Fed. Cas. 1025.

While a petitioning creditor may be reimbursed for costs and reasonable expenses in procuring the adjudication, he is not entitled to compensation for personal services. In re Mead et al., 28 Leg. Int. 277; 16 Fed. Cas. 1274.

The assignee was ordered to pay out of the estate the expenses of opposing the allowance of a claim where the bankrupt was without means to do so. In re Richardson, 7 Ben. 155; 20 Fed. Cas. 697.

The circumstances under which an assignee may incur expense, payable out of the assets of the estate, for professional and clerical services, must depend on the exigencies of each individual case. Abuse of such discretion will be corrected by the court when applied to. In re Noles, 18 Fed. Cas. 465 (1872).

Held, that section 5101, R. S., covered a claim for services of a person employed in examining the books and accounts of a bankrupt within six

months before the commencement of proceedings. Ex parte Rockett, 2 Low. 522; 20 Fed. Cas. 1070.

A bankrupt is entitled to fair compensation out of the fund recovered for services rendered by himself in realizing the assets of his estate. Blythe v. Thomas, 45 Fed. Rep. 784.

A claim of a bankrupt for extraordinary services to the estate can only be allowed by the creditors. In re Barnes et al., 2 Fed. Cas. 855.

In the case cited, the United States district court for the western district of Texas passed upon the items of charges and expenses rendered by an assignee under the Act of 1867. In re Pegues, 3 N. B. R. 80; 19 Fed. Cas. 121.

Judge Lowell stated it as the general rule that the court would not award costs to the prevailing party on the trial of an issue on the bankrupt's discharge. In re George et al., 1 Low. 494; 10 Fed. Cas. 195.

Where probable cause of objection to a discharge was shown, the costs of the hearing will not be allowed to the bankrupt, notwithstanding the discharge was granted. In re Rowell, 2 N. Y. Leg. Obs. 285; 20 Fed. Cas. 1288 (1843).

An assignee's charges for the services of a bookkeeper will only be allowed when it is proved that they were necessary for the administration of the estate. In re Barnes, 18 Fed. Rep. 158.

Auctioneer's fees on a sale by the assignee will not be allowed except when they were incurred by order of the court. In re Collins, 8 Ben. 328; 6 Fed. Cas. 112.

An account for the services of an auctioneer in selling the bankrupt's property will only be allowed on a showing that they were necessary. In re Sweet et al., 9 N. B. R. 48; 23 Fed. Cas. 543.

The costs of caring for the property of a bankrupt prior to the filing of a petition are debts against the estate, but not preferred claims. Such costs, when they are incurred after the commencement of proceedings, must be paid by the assignee in full as expenses of administration, when they were necessary in their character and reasonable in amount. Gardner v. Cook, 7 N. B. R. 346; 9 Fed. Cas. 1165.

A committee of creditors, under section 43 of the Act of 1867, were held to be entitled to compensation, notwithstanding there was no express provision in the law to that effect. In re Treat, 10 N. B. R. 310; 24 Fed. Cas. 159.

Under the first section of the Bankrupt Act of 1867, it was held that the court had authority to direct the assignee in bankruptcy to pay out of the assets of the estate the proper expenses of the petitioning creditors in the bankruptcy proceedings. In re Schwab, 2 N. B. R. 488; 21 Fed. Cas. 763 (1869).

The court referred to the analogy between a petition in bankruptcy and a creditor's bill against the insolvent estate of a deceased person, and held that in one case as in the other the creditors should contribute to the expenses. In re Williams, 2 N. B. R. 83; 29 Fed. Cas. 1324.

When the estate was insufficient to pay the costs and counsel fees of

creditors and of the assignee under the Act of 1867 (section 5099, R. S.), the assignee was held to have preference. Gazin v. Norton, 38 Fed. Rep. 200.

The assignee of a bankrupt is not at liberty to charge the assets of the estate in his hands for professional and clerical services rendered him in the execution of his trust until the same shall have been first duly allowed by the court. When the assignee desires to pay for such assistance out of funds in his hands belonging to the estate before submitting his final account, he should apply to the court for the allowance of the same. In re Noles, 18 Fed. Cas. 465 (1872).

The bankrupt was a manufacturer and had material on hand, belonging to Aborn, which he had agreed to make into cloth. The assignee under the direction of the court purchased other materials and completed the manufacture. Aborn demanded the cloth, offering to pay for the labor and additional expenses, which the assignee refused. Suit was brought in trover, and judgment recovered against the assignee for damages. It was held in the bankruptcy court that the judgment against the assignee did not constitute a preferred claim, and had no priority over the claim of the assignee for his fees, costs and expenses or his commissions. In re Overhoffer, 17 N. B. R. 546; 18 Fed. Cas. 520.

Referring to a case where the marshal, under process from a court of bankruptcy, had taken possession of property held by the sheriff under a levy, Judge Hallett of the district court of Colorado held that the property was subject to the reasonable cost of keeping and disposing of it; but that no charge should be made for the services of an auctioneer without showing that such services were necessary; and that the assignee might be paid while necessarily employed in caring for and disposing of the goods. It was further held, that the services of an attorney in establishing the right of an assignee should be charged against the general estate, and not against the property specifically. In re Peabody, 16 N. B. R. 243; 19 Fed. Cas. 35.

Costs of Attachments and Assignments.

The expenses of an attachment will not be allowed from the estate of a bankrupt when the only purpose of the attaching creditor was to collect his own debt. In re Davis, 1 Hask. 232; 7 Fed. Cas. 52.

Where an attachment has been dissolved by proceedings in bankruptcy, the costs may be paid out of the estate, unless the attachment could not operate to preserve the property for the general creditors. In re Holmes, 14 N. B. R. 493; 12 Fed. Cas. 392.

A creditor whose attachment was dissolved by proceedings in bankruptcy cannot have his costs paid out of the estate unless it is shown that the attachment was in aid of the proceedings in bankruptcy and for the benefit of all the creditors. In re Irons et al., 18 N. B. R. 95; 13 Fed. Cas. 99.

A sheriff held the property of the bankrupt under an attachment which was dissolved by the proceedings, and his custody of the same was

attended with some expense. The trustee was ordered to pay him $50 out of the fund. In re Williams, 2 N. B. R. 229; 29 Fed. Cas. 1325.

Costs of an attachment prior to proceedings in bankruptcy will not be paid out of the estate unless the attachment was levied in aid of the proceedings in bankruptcy. In re Hatje, 6 Biss. 436; 11 Fed. Cas. 823.

Where attachment proceedings were auxiliary to proceedings in bankruptcy, and operated to the benefit of all the creditors, the expenses will be allowed. In re Ward, 9 N. B. R. 349; 29 Fed. Cas. 160.

An officer having custody of property under an attachment which has been dissolved by bankruptcy is entitled for keeping the same to reasonable compensation out of the proceeds; but not to fees for levying the attachment. Zuba v. Hill, 1 Saw. 268; 8 N. B. R. 239; 30 Fed. Cas. 917 (1870).

The court refused to allow the expenses of creditors in attending the first meeting, and the charges of a deputy sheriff in attempting to arrest the debtor where there was nothing to show that it resulted in any benefit to the creditor. In re Ward, 9 N. B. R. 349; 29 Fed. Cas. 160.

A sheriff had levied on the property of the bankrupt before commencement of proceedings. The sale was enjoined, and the property sold by the assignee in bankruptcy. The court held that the sheriff was entitled to poundage on the amount which the property brought at the assignee's sale, and to his fees without reference to the validity of the judgment. In re Welch, 5 Ben. 278; 29 Fed. Cas. 606.

A sheriff may recover from the estate of a bankrupt the fees allowed by the state laws for services rendered by him under executions issued before the commencement of proceedings in bankruptcy; but not for services thereafter. Platt v. Stewart et al., 11 N. B. R. 191; 19 Fed. Cas. 860.

It is only where an attachment suit begun within four months prior to the proceedings in bankruptcy benefited the general creditors that the court will allow the payment of the sheriff's fees out of the estate. In re Jenks, 15 N. B. R. 301; 13 Fed. Cas. 535.

When an attachment has been dissolved by proceedings in bankruptcy, the sheriff has no lien on the goods for his costs; but when the stock was attached for the express purpose of preventing waste, the court will order the assignee to pay the costs for services before the proceedings that were beneficial to the estate, and all proper charges incurred after the filing of the petition in bankruptcy. In re Fortune, 1 Low. 306; 9 Fed. Cas. 500.

The bankrupt's wife brought suit for a divorce, and, under the laws of Massachusetts, attached his personal property to answer a decree for alimony. Before the termination of the suit, the husband was adjudged a bankrupt. The attachment was dissolved, and the chattels came into the possession of the assignee. The wife having applied for an order that her costs be paid in full out of the bankrupt's estate, her application was rejected. In re Foye, 2 Low. 399; 9 Fed. Cas. 649.

Creditors who have commenced an attachment suit before the proceedings in bankruptcy made a claim for the expenses of the same as against the bankrupt's assets. It was held that it could not be allowed, as the

suit was wholly for the benefit of the attaching creditors. In re Archenbrown, 8 N. B. R. 429; 1 Fed. Cas. 1084.

Justice Story allowed the payment to an attaching creditor of the actual costs of an attachment suit where the defendant subsequently became bankrupt, the attachment having been levied in good faith. At the same time, he said that if the creditor chose to pursue his suit, he must do so at the peril of losing all his costs if the bankrupt obtained his discharge. Ex parte Foster, 2 Story, 131; 9 Fed. Cas. 508 (1842).

When a debtor has been adjudged a bankrupt, the trustees named in a previous assignment under a state law cannot be paid for their services, or for attorneys' fees, out of the estate. In re Cohn, 6 N. B. R. 379; 6 Fed. Cas. 21.

A voluntary assignee may be allowed for services in the preservation of the fund, the collection of assets and the conversion of money into property; but is entitled to no compensation as a matter of right when the assignment has been set aside as void. Hunker v. Bing, 9 Fed. Rep. 277.

Pending proceedings for a composition in bankruptcy, a creditor brought suit in a state court to compel a voluntary assignee under the laws of the state to distribute the estate. Held, that he was not entitled to his costs and expenses, the suit not having been of any benefit to the creditors. In re Dumahaut et al., 19 N. B. R. 394; 7 Fed. Cas. 1181.

The assignee named in a voluntary assignment made before the commencement of proceedings in bankruptcy is entitled to disbursements made in the execution of his trust. No priority, however, attaches to his compensation or attorney's fees, and as to such claims he is in no better position than general creditors. In re Lains, 16 N. B. R. 168; 14 Fed. Cas. 941.

Prior to the proceedings, the bankrupts had made a voluntary assignment to a trustee for the benefit of their creditors, and certain property was turned over to such trustee. The assignee in bankruptcy filed a petition that the trustee be required to turn the property over to him. The trustee refused to pay over without deducting his compensation and expenses. The court held that he was entitled to reimbursement for necessary expenses of administrating the estate while in his hands, but not to compensation. In re Kurth, 17 N. B. R. 573; 14 Fed. Cas. 879.

The costs of an attachment recognized as a lien by the law of the state must be paid by the assignee in bankruptcy as a preferred claim. Gardner v. Cook, 7 N. B. R. 346; 9 Fed. Cas. 1165.

When the accounts of an outgoing assignee are referred to a register for a restatement, and eight years elapse after a hearing thereon before the restatement, the presumptions will all be against any surcharging of the original accounts. In re Carrier, 39 Fed. Rep. 193.

Claims of the United States.

It was held, under the Act of 1867, that the United States could enforce its priority without proving its claim, or first exhausting its securities. U. S. v. Lewis et al., 13 N. B. R. 33; 26 Fed. Cas. 920.

The United States cannot enforce its priority against the separate estate of partners, notwithstanding its demand is against the firm. Ibid.

A deputy collector of internal revenue had deposited collections in a bank which was subsequently adjudged a bankrupt. The court held that he could not be subrogated to the rights of the United States as a preferred creditor. Wilkinson v. Babbitt, 4 Dill. 207; 29 Fed. Cas. 1253.

A collector of internal revenue sought to establish priority against the joint assets of a partnership, the individual members of which had signed internal revenue bonds, the condition of which had been broken. Held, that the priority was limited to the individual assets of the signers, and did not extend to the partnership effects. In re Webb et al., 2 N. B. R. 614; 29 Fed. Cas. 493.

The assignee is personally liable to the United States when he has notice of a debt due the government. A judgment distributing the estate to creditors will be no protection unless it appears that the government was a party. The United States does not, by failing to prove its claim before such distribution, lose its right to proceed against the assignee. U. S. v. Barnes, 31 Fed. Rep. 705.

Members of a firm doing business in London which was indebted to the United States were also members of a firm in this country. Held, that in proceedings against the latter firm the United States was entitled to priority as to their separate assets. Lewis v. U. S., 92 U. S. 618.

As to the priority of claims of the United States under the Act of 1800 the following cases are in point: U. S. v. Fisher, 2 Cranch, 358; U. S. v. Hooe, 3 id. 73; Harrison v. Sterry, 5 id. 289.

The United States may file a bill against an assignee in bankruptcy to assert its claim without proving its debt in the bankruptcy proceedings, or pursuing the partnership effects of the principal debtor. Lewis v. U. S., 92 U. S. 618.

In case of a claim by the United States against a firm for undervaluations, its priority under section 5001, R. S., attaches to the proceeds of either the joint estate or the individual estates of the partners. In re Vetterlein, 20 Fed. Rep. 109.

A surety on a custom-house bond, who paid the debt to the United States, was held to have a preference over other creditors under the Bankrupt Act of 1800. Mott v. Maris, 2 Wash. C. C. 196; 17 Fed. Cas. 905.

The priority of debts due the United States will be sustained wherever our courts have acquired jurisdiction. Such priority was held not to be destroyed because an agent of the United States proved the debt under a commission of bankruptcy in England, voted for assignees in such proceedings, and levied an attachment upon the property of the debtors. Harrison v. Sterry et al., Bee, 244; 11 Fed. Cas. 669 (1807).

The bankrupt had received money under a voluntary assignment from a party for whom the claimant had paid a custom-house bond. It was held that, while the United States might claim priority, the surety on the custom-house bond could not. Pollock v. Pratt et al., 2 Wash. C. C. 490; 19 Fed. Cas. 948 (1811).

The United States recovered judgment on a bond given by one of the members of the bankrupt firm as principal and another as surety. Held, under the Act of 1867, that it was entitled to priority over all partnership creditors, and that it was not bound by the general principle of equity respecting the marshaling of assets. In re Strassburger et al., 4 Woods, 557; 23 Fed. Cas. 224.

[See notes to § 63.]

Claims of States.

A state has a lien for taxes on real estate superior to a prior lien of an individual creditor, but this principle does not extend to other debts due the state. In re Brand, 2 Hughes, 334; 4 Fed. Cas. 17.

Justice Miller affirmed a decision of the United States district court for the district of Iowa to the effect that under the Act of 1867 a debt of the state for the labor of convicts, which was secured by a bond with sureties, was entitled to priority over general creditors. In re Dodge, 4 Dill. 532; 7 Fed. Cas. 788.

Money due a state for the labor of convicts was held to be a preferred claim under the Act of 1867 (section 5101, R. S.). In re South Western Car Co., 9 Biss. 76; 22 Fed. Cas. 833.

The warden of a penitentiary had sold goods to the bankrupts. Thereupon he proved the debt, stating that it was due in fact to the state. The debt was held to be entitled to priority. In re Mellor et al., 10 Ben. 58; 16 Fed. Cas. 1331.

A certain tax and assessment were laid on mortgaged property of the bankrupt before the commencement of proceedings, and a water tax was incurred while the premises were occupied by the assignee. The court held that they should all be paid by the assignee, and that they need not be proved as claims against the estate under the provisions respecting claims against the bankrupt. In re Moller et al., 8 Ben. 526; 17 Fed. Cas. 576; s. c., 14 Blatchf. 207; 17 Fed. Cas. 579.

The warden of the state penitentiary had received a sum of money from the treasurer of the state for the purpose of defraying the expenses of the institution, and deposited it in the bankrupt bank to the credit of "H. M. S., Warden." The circuit court, through Judge Drummond, reversing the district court, held that the claim of the state against the bank was not entitled to priority over other creditors. In re Corn Exchange Bank, 7 Biss. 400; 6 Fed. Cas. 576.

Where a state had secured judgment against a surety on a bail bond, it was held that it was entitled to priority. Also, that the state could maintain proceedings in involuntary bankruptcy by virtue of such debt. In re Chamberlin, 9 Ben. 149; 5 Fed. Cas. 422.

Claims for Rent.

When an assignee continues to occupy the premises after adjudication, the rent will be paid as costs. In re Butler, 6 N. B. R. 501; 4 Fed. Cas. 894.

Held, in Maryland, that the lessor of premises which the assignee in bankruptcy occupied after adjudication had a preferred claim for the rent. In re Rose et al., 20 Fed. Cas. 1176.

A marshal in bankruptcy proceedings seized a stock of goods upon which, by the laws of New Jersey, the landlord had a lien for rent. This was held to be a preferred claim so far as the proceeds of such goods would go. In re Hoagland, 18 N. B. R. 530; 12 Fed. Cas. 251.

Where the marshal, under a provisional warrant, occupied rented premises for the storage of the bankrupt's goods, it was held that the assignee was liable for the rent, to be paid as expenses of administration. In re Dunham et al., 27 Leg. Int. 404; 8 Fed. Cas. 35.

Until an assignee in bankruptcy elects to accept a lease as assignee, he does not become liable for rent accruing after the adjudication and assignment in bankruptcy; and occupation alone is not evidence of such election. In re Ten Eyck et al., 7 N. B. R. 26; 23 Fed. Cas. 844.

The rent of a building used by a marshal for keeping and storing goods in bankruptcy proceedings is to be charged as costs of administration and paid in full if the assets are sufficient, but only upon an order of the court and after ascertaining that the assets are sufficient to discharge all the expenses of administration of the same class. In re Hoagland, 18 N. B. R. 530; 12 Fed. Cas. 251.

The decree of adjudication was made March 26th, but the assignees continued to occupy the store previously occupied by the bankrupts for two or three months after that date. Held, that they were bound to pay in full the rent for the quarter commencing April 1st. Ex parte Faxon, 1 Low. 404; 8 Fed. Cas. 1109.

When the assignee in bankruptcy keeps the stock of the bankrupt in the latter's former place of business, the landlord may be allowed rent at the rate paid by the bankrupt as a charge for storage. In re Appold, 7 Am. Law Reg. 624; 1 Fed. Cas. 1075.

The landlord should be awarded a fair compensation where he permitted the assignee to keep the bankrupt's property on the leased premises after adjudication. In re Secor, 18 Fed. Rep. 319.

Where an assignee kept the goods of the bankrupt in the store previously occupied by the latter, it was held that the rent must be paid and charged as part of the expenses. In re Walton et al., 1 N. B. R. 557; 29 Fed. Cas. 132.

Before an assignee in bankruptcy can be charged with the rent of the premises occupied by the bankrupt, there must be some positive and unequivocal act showing his acceptance of the lease. In re Washburn, 11 N. B. R. 66; 29 Fed. Cas. 307.

Certain property of a bankrupt was stored in a barn. The assignee made a demand on the owner of the barn, and she refused to deliver the property on the ground that she had a lien. Held, that she was entitled to reasonable compensation for the storage of the goods up to the time of the demand and refusal, but not later. In re Kelly, 18 Fed. Rep. 528.

Where the officers of the court continue to occupy the premises of the

bankrupt, the landlord is entitled to a reasonable compensation. In re Hamberger et al., 12 N. B. R. 277; 11 Fed. Cas. 317.

An assignee in bankruptcy does not become assignee of a lease to the bankrupt; and when the assignee occupies the premises after adjudication, the estate is only chargeable with a reasonable sum for the use and occupation. In re Lucius Hart Mfg. Co., 17 N. B. R. 459; 15 Fed. Cas. 1079.

Where a building leased to a bankrupt was occupied by his machinery for sixteen days after the commencement of proceedings, the landlord was held to be entitled to payment by the assignee for the use and occupancy of the premises for that time, and the rate named in the lease was held to be reasonable compensation. In re Breck et al., 8 Ben. 93; 4 Fed. Cas. 43.

The assignee in bankruptcy is bound to compensate the landlord for the use of premises occupied by him in closing up the estate; but he does not become the successor of the bankrupt as to leases belonging to him, or bound by any covenant contained therein. In re Ives, 18 N. B. R. 28; 13 Fed. Cas. 183.

Where it was one of the conditions of the lease that the lessees should pay the taxes on the property, such taxes are merely a part of the rent, and not a privileged debt. Ex parte Houghton et al.; In re Fortune, 1 Low. 554; 12 Fed. Cas. 584.

Proceedings for the eviction of the bankrupt from the premises that he occupied were enjoined by the court of bankruptcy. Held, that the landlord could not prove his claim as a debt against the estate under the terms of the lease from the date of the injunction to the adjudication; but that he should be allowed a proper sum by the assignee from the injunction to the time that he regained possession of the premises. In re Lynch et al., 7 Ben. 26; 15 Fed. Cas. 1171.

The bankrupts were indebted for six months' rent of the store which they occupied, previous to adjudication, and thereafter the assignee continued to occupy it for two months. There were goods of the bankrupts on the premises sufficient to satisfy the rent, which were subject to distress under the laws of the state. It was held that the assignee must pay rent up to the time that he surrendered the property from the assets of the bankrupt's estate. Longstreth v. Pennock et al., 7 N. B. R. 449; 15 Fed. Cas. 838.

There was some machinery on the premises occupied by the bankrupts at the time of the commencement of proceedings. The assignee took possession of this property, and it remained on the premises for eleven months, when it was sold. On the petition of the landlord for rent of the premises, the court held that he could have compensation to the extent that the estate had been benefited thereby. In re Fowler et al., 8 Ben. 421; 9 Fed. Cas. 613.

Where the marshal under a provisional warrant had kept the goods of the bankrupt in the premises formerly occupied by the latter, the court used this language: "The landlord is entitled to nothing by virtue of the

lease, unless the assignee elects to take the lease and thereby becomes in fact assignee of the lease." The court proceeded to hold that the estate was liable to the landlord not under the lease, but for the benefit conferred upon the estate by the use of the premises for storage only. In re Wheeler et al., 19 N. B. R. 385; 29 Fed. Cas. 877.

Where an assignee in bankruptcy continues to occupy the premises of the bankrupt he will be credited with the rent that he is obliged to pay, if his occupancy is for the benefit of the estate; but the right of the landlord otherwise expires on the day of adjudication. In re Webb et al., 6 N. B. R. 302; 29 Fed. Cas. 494.

Where a tenant made an assignment to a trustee, and the latter sold the goods on the premises after the commencement of proceedings in bankruptcy against the tenant, and paid the proceeds to the assignee, the lessor must be paid for rent due out of the proceeds. In re Bowne et al., 12 N. B. R. 529; 3 Fed. Cas. 1086.

Before the commencement of proceedings, the landlord had proceeded against the bankrupts to evict them under the state law. These proceedings were enjoined in bankruptcy. The assignee remained in possession of the premises for over six months later. The landlord applied for rent during this period at the rate stipulated in the lease and alleged that he had been offered that sum. The court held that he was not entitled to rent at the rate named in the lease, but only to a reasonable compensation for the use of the premises. In re Metz et al., 6 Ben. 571; 17 Fed. Cas. 229.

On a claim by a landlord for rent during the time that the marshal kept the bankrupt's goods stored on the leased premises, while they were in his possession under a provisional warrant, Judge Drummond said: "On the testimony, the landlord should have applied to this court immediately after the marshal took possession of the goods and premises, to have the goods and furniture removed, and the premises vacated by the marshal. Such a motion would have been granted. If he had an opportunity to rent the premises, he should so have represented to the court." In re McGrath et al., 5 Ben. 183; 16 Fed. Cas. 126.

The bankrupt occupied the premises under a verbal lease for an annual rental of $1,600 and taxes. The register, and after him the assignee, held possession until the 25th of March. Near the end of April, for the first time, an application was made to the assignee for the key, and he immediately surrendered it. In the meantime, and on the 1st of February, the owner had leased the premises to a company at a rent of $2,000. The landlord filed a claim of rent to February 1, 1867, at $1,600 and the company from February 1st to May 1st at the rate of $2,000 per annum. Judge Blatchford said: "I think that the assignee ought to pay rent for the store from December 26, 1868, to April 1, 1869, at the rate of $1,600 per annum, and for no other period at any rate." In re Merrifield, 3 N. B. R. 98; 17 Fed. Cas. 80.

Attorneys' Fees.

The sum to be paid to the attorney of the assignee for services is considered by the court in the case cited. In re Warshing, 5 N. B. R. 350; 29 Fed. Cas. 301.

An assignee's account for attorney's fees should be submitted to a meeting of creditors for allowance or disallowance. In re Hubble et al., 9 N. B. R. 523; 12 Fed. Cas. 791.

A petition for the allowance of attorney's fees will not be entertained after the filing of the assignee's final account. In re Kennedy et al., 14 Fed. Cas. 309.

Whether a counsel fee should be allowed in bankruptcy proceedings, and for what amount, is to be determined by the court, and is a question addressed to its equity. In re Williams, 2 N. B. R. 83; 29 Fed. Cas. 1324.

Counsel fees for services to part of the creditors should not be allowed out of the general fund. In re Baxter, 28 Fed. Rep. 452.

A claim of attorneys for services in defending a suit prior to the commencement of proceedings in bankruptcy, and for preparing the petition and schedules, can only be paid *pro rata* with other debts. In re Handell, 15 N. B. R. 71; 11 Fed. Cas. 420.

It is the duty of the register to examine and regulate charges by the assignee for counsel fees and other services, whether any creditor objects to the account or not. In re Sawyer, 16 N. B. R. 460; 21 Fed. Cas. 560 (1877).

The fees of an attorney for resisting an involuntary adjudication and preparing schedules can only be proved when the retainer was prior to the commencement of proceedings. In re Ward, 12 Fed. Rep. 325.

Judge McCandless of the district court of Pennsylvania decided that a reasonable charge to the attorney of a voluntary bankrupt, for services in drafting the petition and schedules, may be allowed out of the estate in the hands of the assignee as costs incurred in administration. In re Kennedy et al., 14 Fed. Cas. 309.

Under the Act of 1867, the court had power to allow the bankrupt his expenses in defending himself against the petition, including attorneys' fees, and also for attorneys' fees in securing the allowance of his exemptions. In re Comstock et al., 5 N. B. R. 191; 6 Fed. Cas. 239.

Blatchford, district judge, refused to allow out of the assets of the bankrupt estate $250 claimed as counsel fees to the bankrupt's attorney, no such allowance being authorized by the Bankruptcy Act of 1867, or by the practice in similar cases. In re New Lamp Chimney Co., 18 Fed. Cas. 90.

Judge Blatchford ordered the payment of a bill by the bankrupt's attorney for services and expenses when it appeared that they expedited the conversion of the estate into money, and saved considerable expense. In re Montgomery, 3 Ben. 364; 17 Fed. Cas. 617.

An assignee cannot make a contract with an attorney to perform services for a contingent fee, without leave of the court. The court in

bankruptcy will deal summarily with attorneys' fees, and require them to pay over any excess retained by them. In re Brinker et al., 19 N. B. R. 195; 4 Fed. Cas. 143.

Under the Act of 1841, a claim of solicitors for services and expenses in obtaining the discharge of a voluntary bankrupt would not be paid out of the assets; but Justice Story expressed the opinion that a petitioner in involuntary proceedings might be so reimbursed. Ex parte Hale et al., 5 Law Rep. 403; 11 Fed. Cas. 179 (1842).

A petitioning creditor in involuntary bankruptcy is entitled to reimbursement for a reasonable attorney's fee incurred and paid in prosecuting the proceedings, and it should be paid before a dividend is made among the creditors. No such preference exists for expenses incurred in attending the court. In re King, 4 Biss. 319; 14 Fed. Cas. 503.

Prior to the election of the assignee, several suits had been commenced against the bankrupt in which attorneys employed by him had rendered services more or less beneficial to the estate, and they presented a bill to the assignee for such services, which was paid by him. The disbursement was disallowed in the settlement of the assignee's accounts under general order 30, Act of 1867. In re Hamberger et al., 8 Ben. 189; 11 Fed. Cas. 317.

The court refused to allow an assignee for professional services as counsel rendered by the assignee's son, holding that such counsel must be regarded as acting on behalf of his father as an individual. In re New York Mail Steamship Co., 1 Chi. Leg. News, 210; 18 Fed. Cas. 156.

No charges should be allowed against the assets in the hands of the assignees for professional services of counsel rendered prior to the appointment of the assignees. Ibid.

An attorney for a debtor who had resisted an adjudication in involuntary bankruptcy was held to be entitled to fees out of the estate; and it was further held that he should be allowed the sum paid by the petitioning creditors to their attorney. In re Portsmouth Sav. Fund Soc., 2 Hughes, 239; 19 Fed. Cas. 1087.

Attorneys appeared for the bankrupt to procure the discharge of an order of arrest, and subsequently prepared the schedule and inventory. The court held that a moderate compensation could be allowed them for these services, but that the better practice is for the bankrupts to apply to the court for leave to employ counsel before incurring expense to be charged against the estate. In re Mansfield et al., 6 Ben. 284; 16 Fed. Cas. 659.

Compensation of counsel for the petitioning creditor is taxable as costs in cases of involuntary bankruptcy, but the petitioning creditors have no right to enforce contribution for payment of counsel to an extent beyond the assets realized. The petitioning creditor takes the chances, and should he fail to obtain a decree of bankruptcy or to discover assets he must bear the burden alone. In re O'Hara, Am. Law Reg. (N. S.) 113; 18 Fed. Cas. 622.

Services of counsel in opposing petitions to have a party adjudged an

involuntary bankrupt are not allowable as charges against the assignee; such services are individual claims against the bankrupt and provable in bankruptcy. In re New York Mail Steamship Co., 2 N. B. R. 554; 18 Fed. Cas. 157 (1869).

While an attorney of a receiver appointed by a state court for an insolvent corporation may be paid for such services as benefited and preserved the estate of the corporation, and were not hostile to the proceedings in bankruptcy, he cannot be paid for services rendered in seeking to maintain the authority of the state court as against the jurisdiction of the court of bankruptcy. Platt v. Archer, 13 Blatchf. 351; 19 Fed. Cas. 834.

A question having arisen as to a claim presented by the bankrupt's attorney for services and expenses, it was held that the assignee should bring the matter before the court by petition, whereupon a reference would be ordered. In re Rosenberg, 3 N. B. R. 73; 20 Fed. Cas. 1197.

The assets of the bankrupt amounted to $1,359, and the expenses to $721. Of this, $510 had been paid to the attorneys for costs and fees. The attorneys applied to the court for an additional allowance of $250. The court refused the application; and at the same time expressed the opinion, as the result of his observation, that creditors were commonly to blame for extravagance in the administration of bankrupt estates, first, by their carelessness in the selection of the assignee, and second, by their neglect to superintend his management of the business. In re Drake, 14 N. B. R. 150; 7 Fed. Cas. 1047.

The attorney of the petitioning creditors filed a bill for services and expenses that amounted to one-fourteenth of the entire assets. Chief Justice Chase reversed an order of the district court for the payment of the bill by the assignee, and at the same time said: "There can be no doubt where one or more creditors petition for and procure an adjudication of bankruptcy against a debtor, they may, on motion, be reimbursed for their reasonable expenses. The fund is the fruit of the diligence of such creditors, and it would be manifestly unjust to compel them to bear alone the expenses incurred for the benefit of all." In re Mitteldorfer, Chase, 288; 17 Fed. Cas. 537.

Wages Due to Workmen, Etc.

Under the laws of Maine, the assignee was ordered to pay $50 for the services of a minor within six months next preceding the first publication of a notice of proceedings in bankruptcy, upon proof of the claim by his father. In re Harthorn, 4 N. B. R. 103; 11 Fed. Cas. 705.

The Act of 1841 gave preference to servants for personal services. The court held that this would not cover money loaned to pay such wages. In re Paulson, 19 Fed. Cas. 4.

A sum due an apprentice for overwork was held to be entitled to a preference, under the Act of 1841, as wages due an "operative." Ex parte Steiner, 22 Fed. Cas. 1234.

Orders for goods drawn in favor of the bankrupt's employees were held not to be preferred claims in the hands of the drawees within the Act of 1867 or the laws of Pennsylvania. In re Erie R. M. Co., 1 Fed. Rep. 585.

Laborers had assigned their claims for wages to L., who had advanced money on them. Held, under section 27 of the Act of 1867, that the claims were entitled to preference. In re Brown, 4 Ben. 142; 4 Fed. Cas. 327.

A bankrupt made a composition and resumed business. Later the composition was set aside, and he was adjudged a bankrupt. Held, that an employee was entitled to a preferred claim for wages out of the estate for labor performed while the composition was in force. In re Wells, 4 Fed. Rep. 68.

The Act of 1867 (section 5101, R. S.) gave a priority for wages "for labor performed," etc. It was held that this would not cover the case of a claimant who had been employed for a year at a fixed salary, and was discharged at the expiration of six months owing to the suspension of the bankrupts. In re Pebear et al., 17 N. B. R. 461; 19 Fed. Cas. 405.

Miscellaneous.

A creditor who enjoys the benefit of priority must take it *cum onere*. Brown v. Jefferson Co. Bank, 9 Fed. Rep. 258.

A judgment creditor has no priority, and will share *pro rata* with other creditors in the distribution of the proceeds of a promissory note. In re Erwin et al., 3 N. B. R. 580; 8 Fed. Cas. 779.

When it is sought to have money in the hands of the assignee appropriated to the payment of a claim alleged to have priority, the proper proceeding is a suit under section 2 of the Act of 1867. Hurst v. Teft, 12 Blatchf. 217; 12 Fed. Cas. 1044.

When the goods of a consignor were sold by the bankrupt prior to the proceedings, and the proceeds mingled with the assets, he stands in the same position as other creditors. In re Coan & Ten Broeke M. Co., 6 Biss. 315; 5 Fed. Cas. 1112.

A person who has delivered money to a banker to pay a note when it is received is in no better position than any other creditor when the banker becomes bankrupt. In re Hosie, 7 N. B. R. 601; 12 Fed. Cas. 520.

Private banks who had received certain notes for collection and collected them, failed to pay the owner the proceeds and subsequently became bankrupt. It was decided by Judge Dillon that the owner was in no better position than any other creditor. Bank of Commerce v. Russell, 2 Dill. 215; 2 Fed. Cas. 647; In re Bank of Madison, 5 Biss. 515; 2 Fed. Cas. 657.

A law of the state provided that the assets of an insolvent bank should be applied first to the payment of sums deposited with it by savings banks. Held, that this provision gave a savings bank no prior lien, and that it must share with general creditors. Sixpenny Savings Bank v. Estate of Stuyvesant Bank, 12 Blatchf. 179; 22 Fed. Cas. 264.

The business of the bankrupts was continued in the name of the bankrupt firm under the direction of a committee. A dealer was informed by the committee that all debts incurred after the composition would be paid in full before any payment was made on the old indebtedness, and on that assurance, sold goods to the firm. The assets having been depreciated in value while in the hands of the committee, it was held that the dealer was not entitled to payment in full in preference to the old creditors. In re Brightman et al., 18 N. B. R. 566; 4 Fed. Cas. 138.

The bankrupt had a trust fund in his hands amounting to about $1,500 which he had deposited in bank with his own funds. Finding that he was insolvent, he drew out $1,500 from his individual account and deposited it to the credit of himself as trustee. Two months afterward he was adjudged bankrupt. The court held that while this was a technical preference, still the beneficiaries under the trust, and he as their representative, might have a trust declared. The court said: "Prove what trust money has been paid in, and what of the bankrupt's money and when, and prove what has been drawn out and when; then, by striking the account at any time, you will find how the balance in the bank is to be apportioned, because you will see how that balance originated, whether from trust money or not, or in what proportions. I approve that method of settlement. The bankrupt may state the account, and ascertain how much, if any, of the money transferred on the 29th of February, 1876, was trust money according to the method above mentioned; and for that sum he may retain the deposit. For any deficiency, he, as trustee, must take a dividend concurrently with his general creditors out of the general assets." Ex parte Hobbs; In re Hapgood, 2 Low. 491; 12 Fed. Cas. 260.

[For additional notes pertinent to this section, see §§ 63 and 67.]

DIVIDENDS.

§ 65. **Declaration and Payment of Dividends.**— (a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b.) The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

(c.) The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the

proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

(d.) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

(e.) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

§ 66. **Unclaimed Dividends.**— (a.) Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

(b.) Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

When the declaration of a dividend on a claim was unauthorized, the assignee may withhold payment. In re Herrick, 13 N. B. R. ; 12 Fed. Cas. 42.

The register had no power, under the Act of 1867, to reopen a dividend already declared for the purpose of paying a claim which had not then been proved. In re Smith, 15 N. B. R. 97; 22 Fed. Cas. 403.

As a general rule, where a fund is in the custody of the law, and cannot be paid out without an order of the court, it does not bear interest. Bowman v. Wilson, 12 Fed. Rep. 864.

The court will not compel an assignee to pay a dividend to a creditor who is a debtor to a member of the bankrupt firm, before the determination of a suit to recover the claim. Atkinson v. Kellogg, 10 N. B. R. 535; 2 Fed. Cas. 104.

After an order for a distribution of dividends has been made, a creditor cannot come in, prove up his debt and participate in the dividend. In re Miller, 1 N. Y. Leg. Obs. 180; 17 Fed. Cas. 298.

When only one creditor has proved his claim, he must be paid in full if there are sufficient funds for the purpose; and if there is a balance, it

should be distributed among those who have failed to prove their claims, but whose claims have been taken up on the schedule of the bankrupt. In re Haynes, 2 N. B. R. 227; 11 Fed. Cas. 914.

E. was a member of the firms of E. & B., and E., J. & E. The latter was adjudged bankrupt on the petition of the former, and a dividend had been declared. Though no individual debts had been proved against E., it was held that the share of the dividend which he would be entitled to as a member of the firm of E., J. & E. should be retained by the assignee, to await the action of his separate creditors. In re Ellis et al., 5 Ben. 421; 8 Fed. Cas. 548.

The holder of a note made by the bankrupt proved it for the full amount. An indorser, who held collateral security, paid the note and sold the collateral for less than the amount of the note. Held, that the indorser should take dividends only on the balance. In re Baldwin, 19 N. B. R. 52; 2 Fed. Cas. 508.

When the makers and indorsers of commercial paper all become bankrupt, and the holders, by order of the court, receive a percentage from the estate of the makers, they are only entitled to receive from the estate of the indorsers the difference between such amount and their whole claim. In re Howard et al., 4 N. B. R. 571; 12 Fed. Cas. 625.

In the case cited, the court held that assignees were not obliged to pay interest upon dividends which had been contested in good faith from the time that like dividends were declared upon undisputed debts; but expressed the opinion that they might be required to pay such interest as had been earned upon funds set apart to meet the disputed claim. Hersey v. Fosdick, 20 Fed. Rep. 44.

A bank that had suspended payments reopened its doors, and announced that new deposits would be held separate in trust for the new accounts, and that it would apply its assets as fast as they could be collected to the payment of former accounts. Sometime after, it was adjudicated a bankrupt in involuntary proceedings. The court held that the new depositors could only share with the old creditors. In re Mutual B. F. S. & B. S. Bank, 2 Hughes, 374; 17 Fed. Cas. 1075.

A bankrupt firm had been in the habit of borrowing money for a bank and delivering to it the notes of customers indorsed by the firm. The bank proved its claim for the aggregate of all the notes given by the bankrupt's firm, and a dividend of 30 per cent. was declared. In the meantime, the bank had collected a sum of money on the customers' notes. It was held that this did not reduce the claim upon which the dividend was payable; also that the bank's claim was not secured within the meaning of section 5075, R. S. In re Weeks, 8 Ben. 265; 29 Fed. Cas. 575.

Two persons who had purchased notes of the bankrupts for and on their behalf presented proof of their claims, and they were disallowed. The bankrupt estate was sufficient to pay all the debts. The court ordered a decree to be entered as follows: (1) For the payment in full of the proved debts with interest; (2) for the payment into court of the unproved debts with interest; (3) for the payment of costs, charges, etc.; (4) for the

payment to the persons who had purchased claims against the bankrupts of the amounts paid by them respectively for the claims, with interest; and (5) for the transfer of the rest of the estate by the assignee to the bankrupts. In re Lathrop, 5 N. B. R. 199; 14 Fed. Cas. 1173.

One member of a firm made, and another indorsed a note. The holder recovered judgment against the maker only. Subsequently the firm became bankrupts. The owner of the judgment proved it as a claim against the joint estate of the firm, on the ground that the firm had received the proceeds of the note. After a dividend had been declared, he proved the same judgment as a claim against the judgment debtor, and claimed a dividend from both the joint estate and the individual estate of the latter. It was held that he could recover only from the individual estate. In re Herrick, 13 N. B. R. 312; 12 Fed. Cas. 42.

Judge Wallace, of the United States district court of New York, used this language: "Where there are two classes of creditors having a common debtor, who has several funds, and one class of the creditors can resort to all the funds, while the other can resort only to part of them, the former shall take payment out of the fund to which they can resort exclusively so that both classes may be protected; and if the former resort to the fund given to both classes, to the loss of the latter, the latter are entitled to be substituted to the extent of the deprivation to which they have been subjected, in the place of the former." In re Foot et al., 8 Ben. 228; 9 Fed. Cas. 355.

A partnership creditor cannot invoke the aid of equity to prevent the application of a dividend in the hands of an assignee in bankruptcy to the debt of an individual creditor when both creditors have attached such dividend under process from a state court. Gilbert v. Quinby et al., 1 Fed. Rep. 111.

Trustees appointed, under the Act of 1867 (section 5103, R. S.), distributed the proceeds of the sale of property made in pursuance of an order of the district court, which was later affirmed by the circuit court. It was held that creditors were concluded by such distribution. Merchants' Bank v. Slagle, 106 U. S. 558.

LIENS.

§ 67. **Liens.**— (a.) Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

(b.) Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

(c.) A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne

process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

(d.) Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

(e.) That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed

null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

(f.) That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

Liens by Mortgage, when Valid.

The proper proceeding to have an unrecorded mortgage enforced as a lien superior to a prior recorded mortgage is by a bill in equity or an action at law. Barstow v. Peckham et al., 5 N. B. R. 92; 2 Fed. Cas. 951.

It was held by Judge Emmons in a case not fully reported, that a court of bankruptcy would protect mortgages upon vessels without regard to liens under state laws. The Ironsides, 15 Int. Rev. Rec. 59; 13 Fed. Cas. 106.

A chattel mortgage that is void as to some of the property sought to be recovered may nevertheless be valid as to the other property. In re Perrin et al., 7 N. B. R. 283; 19 Fed. Cas. 261.

It is competent for the court of bankruptcy to grant leave to a mortgagee to bring an action of foreclosure against the bankrupt and have the mortgaged property sold. McHenry v. La Société Française, 95 U. S. 58.

A mortgage covering real and personal property will be enforced first as to the former where there are other liens on the personal property. McLean v. LaFayette Bank et al., 4 McLean, 430; 16 Fed. Cas. 280 (1848).

A mortgage which was partly a preference was sustained as to that part which was not subject to such objection. Whiston v. Smith et al., 2 Low. 101; 29 Fed. Cas. 944.

It is not of itself a fraud for a firm to give a mortgage which includes a debt incurred by one of the partners in behalf of the firm. Wait v. Bulls Head Bank, 19 N. B. R. 500; 28 Fed. Cas. 1338.

The failure of a mortgagee to prove his debt in bankruptcy does not deprive him of his lien, and he can enforce it after the close of the proceedings. Wicks et al v. Perkins, 1 Woods, 383; 29 Fed. Cas. 1146.

A mortgage, executed more than four months before bankruptcy proceedings, given to secure advances already made as well as advances to be thereafter made, is valid against the assignee of the bankrupt mortgagor. Schulze v. Bolting, 8 Biss. 174; 17 N. B. R. 167; 21 Fed. Cas. 754 (1878).

A covenant in a mortgage to keep mortgaged property insured constitutes an equitable lien, and is valid against the assignee in bankruptcy of the mortgagor. In re Sands Ale Brewing Co., 6 N. B. R. 101; 21 Fed. Cas. 251 (1872).

Judge Swing, of the district court of Ohio, decided that as a chattel mortgage is valid without being recorded as between mortgagor and mortgagee, the former's assignee in bankruptcy cannot dispute its validity. Douglass v. Vogeler, 6 Fed. Cas. 53.

A mortgage upon a stock of merchandise was held to be good in so far as it secured a loan made at the time of the execution, and invalid in so far as it was given to secure a pre-existing debt. In re Stowe, 6 N. B. R. 429; 23 Fed. Cas. 199.

The assignee of a chattel mortgage took the mortgaged property from the possession of the bankrupt after the appointment of an assignee in bankruptcy. Held, that the property or its value must be restored to the assignee, notwithstanding the mortgage was a valid security. In re Rosenberg, 3 Ben. 366; 20 Fed. Cas. 1196.

A valid chattel mortgage which covered property partly in New York and partly in New Jersey, and was recorded in the former, but not in the latter state, was held to be good as to the New York property, though of no efficacy as to the property in New Jersey. In re Soldiers' Business, Messenger & Dispatch Co., 3 Ben. 204; 22 Fed. Cas. 781.

A mortgage given by the bankrupt before the commencement of proceedings to secure payment for goods to be sold to him by the mortgagee was held to be valid against the assignee in bankruptcy, to the extent of the goods sold on the faith of the mortgage. Marvin v. Chambers, 12 Blatchf. 495; 16 Fed. Cas. 927.

After adjudication, but without the appointment of an assignee, the bankrupt settled with his creditors, and gave them a mortgage. A year later, new proceedings were commenced against the bankrupt. It was held that the mortgage was valid, and the court granted an order for its foreclosure. Robinson v. Hall et al., 8 Ben. 61; 20 Fed. Cas. 1011.

The alleged bankrupt having leased a large house, and fitted it up for a sanitarium, executed a chattel mortgage to secure the parties who supplied the wares and fixtures. He was not shown to be insolvent at

the time; and it was held that the mortgage was a valid security. Potter et al. v. Coggeshall, 4 N. B. R. 73; 19 Fed. Cas. 1138.

There was held to be no provision in the Bankrupt Act of 1867 which invalidates a security, otherwise valid, because it was in the form of an absolute deed when it was in fact given and accepted as a mortgage. Gaffney's Assignee v. Signalgo, 1 Dill. 158; 9 Fed. Cas. 1026.

A court in bankruptcy will follow the decisions of the supreme court of the state in deciding upon the validity of an unrecorded chattel mortgage against creditors with notice. Cragin v. Carmichael et al., 2 Dill. 519; 6 Fed. Cas. 706.

The mortgagee of personal property brought an action in trover in a state court against the purchaser from the assignee in bankruptcy for goods which the assignee had sold without an order of the court. The court expressed doubt whether he had any power to interfere, but said that if he had he would not restrain the prosecution of the suit in the state court. In re Cooper, 16 N. B. R. 178; 6 Fed. Cas. 469.

A chattel mortgage to secure money advanced to a firm was executed by one partner. The other partner subsequently gave his assent. The mortgage contained a clause making the mortgagors agents of the mortgagee to sell the goods and account for the proceeds. The mortgage was held to be valid as against the assignee in bankruptcy of the mortgagors. Haukins v. First Nat. Bank, 1 Dill. 462; 11 Fed. Cas. 479.

There were two mortgages upon certain property in the form of trust deeds. It was held that the bankruptcy of the second mortgagee did not prevent the execution of a power of sale in the first mortgage. Long v. Rogers et al., 6 Biss. 416; 15 Fed. Cas. 828.

A mortgagor, after condition broken, went into bankruptcy. When the marshal and assignee in bankruptcy took possession of certain timber, etc., which had been severed from the mortgaged premises, the mortgagee notified them that he claimed them under his mortgage. Held, that the marshal and assignee must be regarded as taking possession for the mortgagee, so that his rights were saved under the laws of Vermont. In re Bruce, 9 Ben. 236; 4 Fed. Cas. 467.

Under the Act of 1867, it was held that a chattel mortgage otherwise valid is good against an assignee in bankruptcy, notwithstanding that it was not recorded as required by the law of the state. Coggeshall v. Potter et al., Holmes, 75; 6 Fed. Cas. 3.

The lien of a chattel mortgage will be recognized in proceedings in bankruptcy when it was filed after the commencement of proceedings, but before the appointment of an assignee, there being no judgments against the bankrupt. In re Collins, 8 Ben. 59; 6 Fed. Cas. 112.

When the mortgagee of a stock of goods buys them under circumstances which render the transaction void under the Bankruptcy Act, his rights as mortgagee are not impaired by the transaction. In re Kahley, 2 Biss. 383; 14 Fed. Cas. 71.

C. recovered a judgment against the bankrupt on the 5th of November, 1866, but did not record it in the county clerk's office until the 16th of

October, 1867. S. had a mortgage on the land executed and recorded on the 7th of April, 1867. The debtor and mortgagor having been adjudged bankrupt, the court decided, under the laws of Texas, that the mortgage lien had priority over that of the judgment. In re Lacey, 4 N. B. R. 62; 14 Fed. Cas. 920.

To give a mortgagee, under the laws of South Carolina, a right to the rents and profits of the mortgaged premises, it is not necessary for him to make an actual entry when they have passed into the hands of an assignee in bankruptcy. In re Bennett, 2 Hughes, 156; 3 Fed. Cas. 206.

The fact that a bank took a mortgage to secure an indebtedness within two months before bankruptcy does not prove that it regarded its debtor as insolvent, or that the mortgagor contemplated bankruptcy. McLean v. LaFayette Bank et al., 3 McLean, 587; 16 Fed. Cas. 264 (1846).

An assignee in bankruptcy cannot recover the value of mortgage personalty where the mortgagee took possession before the filing of the petition, notwithstanding the mortgage was not recorded in compliance with the laws of the state. Miller v. Jones, 15 N. B. R. 150; 17 Fed. Cas. 322.

Where the principal and surety of a debt both become bankrupt and the surety is secured by a mortgage, the creditors to whom the surety is bound can require the mortgaged property to be applied to the discharge of their debts. If, however, the surety is discharged, or loses his lien, the creditors will have no specific lien. Ex parte Morris, 2 Low. 424; 17 Fed. Cas. 783.

A mortgage given long before the commencement of bankruptcy proceedings, but not recorded until less than two months prior thereto, was held not to be fraudulent on account of the failure to record. Curry v. McCauley. 20 Fed. Rep. 583.

A mortgage given in substitution for a former mortgage, and for credit and advances made in pursuance of an agreement that the mortgage should be given, is valid, although the mortgagor may have been insolvent at the time, and the mortgagee may have known that fact. Douglass v. Vogeler, 6 Fed. Rep. 53.

A chattel mortgage was recorded on the day before the petition in bankruptcy was filed; but it was shown that the consideration did not pass until the mortgage was recorded. The transaction being in good faith, the mortgage was upheld as a lien upon the bankrupt's property. In re Perrin et al., 7 N. B. R. 283; 19 Fed. Cas. 261.

A court granted a petition of the assignee of a chattel mortgage made for a present consideration on the 4th of August, but not filed until the 8th of December, to compel the assignee in bankruptcy and the mortgagee to pay over the proceeds of the mortgaged property. The proceedings in bankruptcy were commenced two months after the filing of the mortgage and one month after the mortgagee had taken possession of the property. In re Barman, 14 N. B. R. 125; 2 Fed. Cas. 831.

When an assignee sells property subject to two mortgages, the first mortgagee is as much entitled to the payment of principal, interest, and costs, as if the mortgage had been foreclosed in court; but when money

was paid to release the mortgaged premises from the wife's dower, the expenses should be apportioned between them. In re Wartenbach, 11 N. B. R. 61; 2 Fed. Cas. 956.

A bankrupt gave a mortgage on five bales of cotton to a creditor who already had a lien on 320 acres of land. The register ruled that the mortgage was a waiver of the prior lien, but the district court reversed the register and ordered the assignee to sell the land and satisfy the lien. In re Hutto, 3 N. B. R. 787; 12 Fed. Cas. 1094.

An assignee in bankruptcy cannot maintain an action of trover to recover the value of personal property which has been taken possession of by a mortgagee before the commencement of the proceedings in bankruptcy. Jones v. Miller, 17 N. B. R. 316; 13 Fed. Cas. 994.

A mortgage given more than five months before bankruptcy to secure future advances was held to be good as to all advances made in good faith more than two months before the filing of the petition, and as to those made within that time if they were loans of actual value made in good faith. Crampton v. Tarbell, 6 Fed. Cas. 745.

On the principle that the assignee in bankruptcy takes the property of the bankrupt subject to all valid liens, it was held in Massachusetts that a mortgage of personal property is good against the assignee in bankruptcy, although it had not been recorded at the date of the commencement of the proceedings. Ex parte Dalby, 1 Low. 431; 6 Fed. Cas. 116.

The bankrupts had borrowed a sum of money and secured it by a mortgage of all the machinery on their premises, and also all the machinery that they might purchase and all stock that they might manufacture during the next four years. On the 16th of July, 1842, the mortgagee, by his agent, took possession of the machinery in the factory when the mortgage was made, and also tools and stock purchased and made thereafter. On the 26th of August of the same year, the debtors filed their petition in bankruptcy, and an assignee was subsequently appointed. The assignee applied to the court for an order authorizing him to take the property from the possession of the mortgagee. It was held that the possession taken by the mortgagee gave him a lien that was protected by section 2 of the Act of 1841. Mitchell v. Winslow et al., 2 Story, 630; 17 Fed. Cas. 527 (1843).

In order to entitle the mortgagee to obtain leave to foreclose his mortgage in another court, he must prove his debt in bankruptcy as a secured debt. His petition must allege this fact; also date of proof and amount of debt. The mortgage and mortgaged property must be fully described, and the facts stated whether there are other and what incumbrances upon such property, fully describing the same; that the estate has no ultimate interest in the mortgaged property, and a statement of the actual value thereof in order that the court may be informed whether there is a surplus of value over other incumbrances; and the petition must be signed and duly verified. In re Sabin, 9 N. B. R. 383; 21 Fed. Cas. 119 (1874).

Where mortgaged property has been legally conveyed by the bankrupt

before the commencement of bankruptcy proceedings, so that no right or claim has passed to, or been set up by the assignee in bankruptcy, no application to the bankruptcy court for leave to foreclose is necessary. Ibid.

Liens by Mortgage, when Void.

The property of a bankrupt passes to his assignee free from the lien of a mortgage which is void under the laws of the state. Walt v. Bull's Head Bank, 19 N. B. R. 500; 28 Fed. Cas. 1338.

The court held a chattel mortgage of a stock of goods to be void when it allowed the mortgagor to retain possession, and sell the goods and buy others to replace those sold. Smith v. Ely et al., 10 N. B. R. 553; 22 Fed. Cas. 538.

A mortgage given partly to secure an existing debt and partly to secure a present credit, the mortgagee knowing that the mortgagor was embarrassed, was held to be wholly void. Tuttle v. Truax, 1 N. B. R. 601; 24 Fed. Cas. 397.

To make good the lien of a mortgage of personal property, which is otherwise invalid, the mortgagee must take possession of them without delay upon the maturity of the debt. In re Forbes, 5 Biss. 510; 9 Fed. Cas. 394.

A bill of sale to secure a debt in Massachusetts is regarded as a pledge, and cannot be registered as a mortgage. Ex parte Fitz, 2 Low. 519; 9 Fed. Cas. 185.

Held, under the laws of Vermont, that a mortgage is not fully made as against an assignee in bankruptcy until it is recorded. Bostwick v. Foster, 14 Blatchf. 436; 3 Fed. Cas. 958.

Judge Lowell held, under the circumstances of the case, that a mortgage given by a retail merchant, less than four months prior to bankruptcy, to secure money to pay an existing indebtedness, was void as against the assignee. Ex parte Mandell, 1 Low. 506; 17 Fed. Cas. 1.

It was held, under the laws of Wisconsin, that a mortgage of chattels is ineffectual to pass property acquired after its execution, and that as to such property the assignee in bankruptcy can hold it against the mortgagee. In re Eldridge, 2 Biss. 362; 8 Fed. Cas. 412.

The assignee of a mortgage given to indemnify a surety, who is himself a creditor and beneficiary of the trust so created, has no priority over other creditors secured in the same manner. In re Pierce et al., 2 Low. 343; 19 Fed. Cas. 620.

A bankrupt gave his attorneys a mortgage on a house after the entry of a decree declaring that it was not exempt as a homestead. The mortgagees were ordered summarily to release it. In re Boothroyd, 15 N. B. R. 364; 3 Fed. Cas. 895.

The silent partner of an insolvent firm conveyed all his interest to the active partner, and the latter mortgaged the whole stock to secure existing debts of the creditors of each. The transaction was held to be fraudulent. In re Waite et al., 1 Low. 207; 28 Fed. Cas. 1339.

The debtors, who were manufacturers of pianos, gave a mortgage to secure an existing debt with an agreement that they should remain in possession of the property and continue to carry on the business. The mortgage was held to be void as to other creditors. Wait v. Bull's Head Bank, 19 N. B. R. 500; 28 Fed. Cas. 1338.

A mortgage given to secure attorney's fees for drawing a petition and schedules in voluntary bankruptcy was held to be void under section 35 of the Act of 1867. The attorneys could prove their claim as unsecured creditors. In re Evans, 3 N. B. R. 261; 8 Fed. Cas. 835.

A mortgage given to secure previous indebtedness and also a loan, the proceeds of which were to be used in giving other creditors fraudulent preferences, the mortgagee having full knowledge of the facts, is void. Bucknam v. Goss, 1 Hask. 630; 4 Fed. Cas. 575.

To avoid a mortgage as a preference, it was necessary under the Act of 1867 that the proceedings in bankruptcy should be commenced within four months after it was executed. Hall v. Hayner et al., 3 Chi. Leg. News, 402; 11 Fed. Cas. 226.

Under the laws of New York a chattel mortgage, with an agreement that the merchant might retain possession of the property and make sales from time to time, retaining the proceeds, was held to be void, and a petition that the assignee in bankruptcy pay the proceeds of the property to the mortgagee was denied. In re Cantrell, 6 Ben. 482; 5 Fed. Cas. 31.

A settlement by a debtor of a valuable residence upon his wife was set aside as a fraud on the Bankrupt Law of 1867. A mortgage of such property by the wife to secure *bona fide* loans was sustained; but a mortgage of same made to secure a prior and unsecured debt of the husband was set aside. Sedgwick v. Place, 12 Blatchf. 163; 10 N. B. R. 28; 21 Fed. Cas. 992 (1874).

A controversy arose between the assignee in bankruptcy and the bankrupt as executor of a decedent as to surplus moneys arising upon the sale of mortgaged premises. The referee found in favor of the assignee on the ground that the mortgage was void as against the creditors of the bankrupt. Held, that this proceeding was conclusive as to the validity of the mortgage. In re Dakin, 19 N. B. R. 181; 6 Fed. Cas. 1114.

Where a firm gave a chattel mortgage to a retiring partner on all its goods in stock or to be acquired by purchase, and it was agreed that it should not be recorded, the mortgage was held to be void as to subsequent creditors. In re Stephens, 3 Biss. 187; 22 Fed. Cas. 1275.

A chattel mortgage is void as against an assignee in bankruptcy if the mortgagor is allowed to retain possession of the goods and sell them. In re Forbes, 5 Biss. 510; 9 Fed. Cas. 394.

The debtor had given a mortgage to secure indorsements more than six months before the commencement of proceedings in bankruptcy. No money was paid by the mortgagee. Held, that the mortgage was not valid against the mortgagor's assignee in bankruptcy. Sessions v. Johnson, 95 U. S. 347.

The debtor had borrowed of his wife the proceeds of a legacy to her,

and used it in his business. Later, and while in contemplation of bankruptcy, he executed a mortgage to secure the loan. This was held to be void under the Act of 1800. Rundle v. Murgatroyd, 4 Dall. 304.

Judge Woodruff held a mortgage to be void which was given by the bankrupt to secure existing debts and future loans, if made, without any definite agreement that they should be made. Todd et al. v. Townsend, 9 Am. Law Rev. 150; 23 Fed. Cas. 1352.

It was shown in support of a mortgage given by a debtor to secure his indorsers a few days before making an assignment that the mortgage was given in pursuance of a prior agreement. The court held that to validate a mortgage otherwise void, such an agreement must be specific, and such as could be enforced in a bill for specific performance. Nash v. Le Clercq et al., 17 Fed. Cas. 1171.

When a mortgage is made to secure a debt in pursuance of an oral promise made at the time the debt was contracted, it is nevertheless void if the debtor has become insolvent prior to the execution. Lloyd v. Strowbridge, 16 N. B. R. 197; 15 Fed. Cas. 731.

A trader, within four months before the filing of a petition in involuntary bankruptcy, gave a mortgage on all his stock and bills receivable to secure a creditor who had reason to believe that the mortgagor was insolvent. Such a transaction was presumptively fraudulent, and the burden is on the mortgagee to prove that it was in good faith and not in fraud of the Bankrupt Act. Hurley v. Smith, 1 Hask. 308; 12 Fed. Cas. 1014.

A retail merchant gave a creditor a mortgage on his stock of goods and remained in possession, selling the mortgaged goods from time to time and replenishing his stock, so that the articles covered by the mortgage could not be identified. It was held that the mortgagee could not take possession of the stock after the commencement of proceedings in bankruptcy, and had no lien on the property, and could only share equally with other creditors. In re Manly, 2 Bond, 261; 16 Fed. Cas. 628.

A mortgagor of chattels resided in one county of New York and the mortgage was filed in another. It was held that the mortgage was void as to creditors, and that the assignees in bankruptcy could enforce their rights against the property mortgaged. Platt v. Stewart, 13 Blatchf. 481; 19 Fed. Cas. 852.

Both by the statutes of Nevada, and by the general law, a mortgage of a stock of goods where the mortgagor remains in possession and sells them as his own is void as to creditors, and accordingly as to the assignee in bankruptcy. In re Morrell, 2 Saw. 356; 17 Fed. Cas. 781.

A mortgage given by an insolvent debtor with the intent to prefer a creditor, who had knowledge of the intent, and who withholds it from record, is void, although it was not executed within the statutory time. Blennerhassett v. Sherman, 115 U. S. 100.

The bankrupt gave a chattel mortgage to secure notes for the purchase price of certain personal property sold to him. The mortgagor remained in possession of the property, and the mortgage was not filed in the town where he resided, as required by the laws of New York. Held, that the

mortgagee had no vendor's lien, and that the mortgage was void as against the assignee in bankruptcy representing the creditors. In re Leland, 10 Blatchf. 503; 15 Fed. Cas. 292.

The bankrupt had transferred certain property to his father, to whom he was indebted. Judge Choate said: "The fact that the bankrupt then did not expect or intend to go into bankruptcy, if he is to be credited in that respect, does not relieve the act from being considered an act done in contemplation of becoming bankrupt within the meaning of the statute." In re Duff, 4 Fed. Rep. 519.

Liens by Legal Proceedings, when Valid

Executions are valid when the creditors did not have reasonable cause to believe the debtor insolvent. In re Black et al., 2 Ben. 171; 3 Fed. Cas. 500.

The Act of 1841 preserved a lien by attachment equally with one by judgment. Downer et al. v. Brackett et al., 5 L. J. 392; 7 Fed. Cas. 102 (1842).

A levied execution issued under a judgment regularly obtained without collusion of the debtor is not in fraud of the bankrupt law, and creates a valid lien. In re Schnepf, 1 N. B. R. 190; 21 Fed. Cas. 719 (1867).

Under the Act of 1841, an attachment followed by judgment before bankruptcy was a lien that was wholly unaffected by the proceedings in bankruptcy. In re Cook, 2 Story, 376; 6 Fed. Cas. 383 (1843).

The Act of 1841 recognized the lien of an attachment made before the commencement of proceedings, notwithstanding judgment was not entered until after the filing of the petition. In re Reed, 3 N. Y. Leg. Obs. 262; 20 Fed. Cas. 417 (1844).

The attachment by trustee process under the laws of Vermont, more than four months before the debtor filed his petition in bankruptcy, was held to be a lien that would be respected under the Law of 1867. In re Peck, 9 Ben. 169; 19 Fed. Cas. 72.

The Bankrupt Act of 1867 protected a lien on real estate obtained by a creditor by a valid judgment before the commencement of proceedings. Webster v. Woolbridge, 3 Dill. 74; 29 Fed. Cas. 560.

Held, in Pennsylvania, that section 14 of the Act of 1867 did not operate to dissolve an attachment execution. Wilbur v. Wilson et al., 29 Fed. Cas. 1197.

Under the Act of 1867, the court of bankruptcy would protect the lien of judgment creditors who had an execution issued and levied upon the debtor, notwithstanding they had doubts of his solvency at the time. In re Kerr, 2 N. B. R. 388; 14 Fed. Cas. 385.

The assignee in bankruptcy cannot recover property of the bankrupt from a sheriff who levied upon it before the proceedings in bankruptcy were commenced. Townsend v. Leonard et al., 3 Dill. 370; 24 Fed. Cas. 102.

Less than four months before the commencement of proceedings in

bankruptcy, the bankrupt had borrowed money of a person who had no knowledge of his insolvency and took a warrant of attorney. Later, having in the meantime learned of the insolvency, he entered judgment. The judgment was held to be valid. Vogle v. Lathrop, 4 N. B. R. 439; 28 Fed. Cas. 1246.

The laws of the state made a judgment a lien on "all real property of defendant." Held, under this provision, that a judgment is not a lien upon land previously conveyed by a bankrupt in fraud of creditors. In re Estes et al., 3 Fed. Rep. 134.

It was held in the case cited that the delivery of an execution to a marshal previous to the filing of a petition in bankruptcy creates a lien which is not affected by the proceedings in bankruptcy. In re Wheeler et al., 19 N. B. R. 385; 29 Fed. Cas. 877.

The proper proceeding for a creditor having a valid judgment against the bankrupt is to apply by petition asking that the judgment be paid out of moneys in the hands of the assignee; and in the first instance, his petition should be verified in person and not by attorney. In re Smith, 2 N. B. R. 297; 22 Fed. Cas. 397.

A debtor was adjudicated a bankrupt after his property had been advertised for sale on execution, but before the sale. It was held that the sheriff could proceed with the sale unless restrained, and that the adjudication did not itself operate as an injunction. Thames v. Miller, 2 Woods, 564; 23 Fed. Cas. 887.

An execution creditor may assert his lien in a court of bankruptcy, but cannot sell the bankrupt's property after the filing of the petition without leave of the court. The Skylark, 4 Biss. 388; 22 Fed. Cas. 307.

It was decided by Judge Deady that under the first clause of section 35, Act of 1867, a judgment obtained by default against an insolvent debtor was, in effect, a transfer of the property on which it became a lien. Catlin v. Hoffman, 2 Saw. 286; 5 Fed. Cas. 307.

An examination in supplementary proceedings was held to be "legal process" within the meaning of section 39 of the Act of 1867. Brock v. Hoppock, 2 N. B. R. 7; 4 Fed. Cas. 197.

There was a valid attachment on a bankrupt's property made more than four months before the filing of the petition, and a creditor received a conveyance of it to secure his own debt and a sum paid by him to dissolve the attachment. Held, that though the conveyance was void as to his own debt, he had a lien for the sum paid to secure the dissolution of the attachment. Robinson v. Tuttle et al., 2 Hask. 76; 20 Fed. Cas. 1049.

Under the Act of 1841, a petitioner in bankruptcy was not divested of the title to his property until the decree had been made. It was, therefore, subject to an execution by his creditors. Ex parte Bennett, 1 Penn. L. J. 145; 3 Fed. Cas. 203 (1842).

The bankrupt had given judgment notes from time to time to secure loans on money. It was held that judgments entered on such notes about a month before the commencement of proceedings in bankruptcy were a valid lien. Piper v. Baldy, 10 N. B. R. 517; 19 Fed. Cas. 716.

Where the sheriff had seized goods of the bankrupt before the commencement of proceedings, and the assignee in bankruptcy had taken possession and sold them, the court will award their owner their full value without respect to the price received by the assignee. Marshal v. Knox, 16 Wall. 551.

Held, that section 2 of the Law of 1841 observed the lien of an attachment made before the commencement of proceedings in bankruptcy, and that the attaching creditor might proceed to judgment and sale after the commencement of such proceedings. Peck v. Jenness, 7 How. 612.

Where a creditor had brought a suit against the bankrupt, and obtained judgment by default, and issued an execution, the lien was held to be good against other creditors unless there had been some participation by the bankrupt himself in the proceedings, which must be established by evidence sufficient to bring conviction to the mind. In re Runzi et al., 3 Fed. Rep. 790.

A creditor brings suit and attaches goods; judgment is awarded the plaintiff, and the attached goods ordered to be sold, but before process on the judgment issues the debtor is adjudged a bankrupt. Held, that the attachment merged into the judgment, and the attaching creditor had a valid lien on the goods or their proceeds, unless it was waived by making proof of debt and accepting dividends. Shelley v. Elliston, 18 N. B. R. 375; 21 Fed. Cas. 1244.

Held, under the laws of New York, that an assignee in bankruptcy was obliged to respect the lien of a judgment where the execution had been delivered to the sheriff, notwithstanding no levy was made. Crane et al. v. Penny et al., 2 Fed. Rep. 187.

Courts of bankruptcy will respect the liens of judgments and their priority as they existed at the time of the adjudication in bankruptcy. Pence v. Cochran et al., 6 Fed. Rep. 269.

When execution has issued from state court and levy has been made before commencement of bankruptcy proceedings, the assignee in bankruptcy cannot recover possession of the assets. Wilson v. Childs, 8 N. B. R. 527; 30 Fed. Cas. 116 (1873).

A warrant to confess judgment was made while a debtor was believed to be solvent. The judgment was entered after the debtor was known to be insolvent. Held, under the Act of 1867, that the judgment must be sustained and satisfied out of the assets in bankruptcy. In re Wright, 2 N. B. R. 490; 30 Fed. Cas. 663 (1869).

Held, under the laws of Illinois, that proceedings in bankruptcy do not defeat the lien of a judgment against the bankrupt upon an administrator's bond, where a suit was instituted before the commencement of proceedings, although the judgment was not recovered until afterward. Voils v. Parker, 4 Fed. Rep. 210.

Where an execution lien has been obtained in good faith, before bankruptcy, on the individual property of a member of a firm under a judgment against the firm, the statutory lien thus obtained will not yield to the equities of the separate creditors of the partner to whose property the lien attaches. In re Sandusky, 17 N. B. R. 452; 21 Fed. Cas. 354.

Two judgments had been entered against the bankrupt before the commencement of proceedings, and no attack was made upon their validity. It was held that they came within the provisions of sections 14 and 20 of the Act of 1867; also held, that the sheriff should be allowed to sell the personal property on which he had levied, and that the court would then determine as to how the deficiency should be discharged. In re Smith, 2 Ben. 432; 22 Fed. Cas. 384.

After the stock of merchandise of the bankrupt had been levied upon by a sheriff, it was seized by the marshal under proceedings in bankruptcy, and delivered to the assignee, who sold it. The court held that the execution creditors were entitled to satisfaction out of the proceeds. Swope et al v. Arnold, 5 N. B. R. 148; 23 Fed Cas. 574.

The claimants having delivered an execution against the bankrupts to the sheriff prior to the filing of the petition, and the sheriff having failed to make an actual levy, asked that the assignee pay the amount of the execution out of the funds in his hands. He having taken possession of the bankrupt's property before the return day of the execution, and the claimants, before such return day, having proved the claim as secured by a lien by virtue of the delivery of the execution to the sheriff, Judge Wallace held that the application must be granted. In re Stockwell et al., 9 Ben. 265; 23 Fed. Cas. 114.

Judge Nixon, of the district court for New Jersey, used this language: "Since the decision of the supreme court in Wilson v. City Bank, 17 Wall. 473, a judgment obtained by the orderly proceedings of a court cannot be impeached or set aside on the ground that the creditors, when the suit was brought, had reasonable cause to believe his debtor did something to aid him in procuring the judgment of which the proof seems to fail in this case. He is entitled to the advantage which his diligence has given him over less vigilant creditors." In re Price et al., 1 N. J. L. J. 228; 19 Fed. Cas. 1316.

Prima facie, judgment and liens under execution secured before the filing of the petition in bankruptcy are valid unless an intent to violate the provisions of the act is manifest. In re Blabon et al. v. Hunt et al., 2 N. J. L. J. 179; 3 Fed. Cas. 493.

The bankrupt had made a default in an action against him before the filing of a petition in bankruptcy, which had been duly entered. After the adjudication, judgment was entered. In the absence of surprise, fraud, or mistake, the court refused to set the judgment aside at the suit of the judgment debtor's assignee in bankruptcy. Fiske v. Hunt, 2 Story, 582; 9 Fed. Cas. 169 (1842).

A writ of attachment gave only the last names of two members of the defendant firm, and did not give the name of the third member at all; but it was amended in both respects before the return day. Proceedings in bankruptcy were commenced against the defendant more than four months before the service of the attachment, and less than four months before the amendment. The attachment was held to be good against the assignee. Harrington v. Fire Assn., 11 Fed. Cas. 605.

Where the property of a debtor had been attached before the act of bankruptcy, and judgment entered, and the property seized on execution afterward, but before the filing of the petition, and there was no showing of fraud or collusion, the court would not enjoin the sale of the property under the execution. Downer et al. v. Brackett et al., 5 L. J. 392; 7 Fed. Cas. 102 (1842).

Justice Baldwin decided, under the Act of 1841, that a petitioner in bankruptcy was not divested of his property until a decree of bankruptcy had been entered; and on this principle gave effect to executions levied on the property of the bankrupt between the filing of the petition and the adjudication. Dudley's Case, 1 Penn. L. J. 302; 7 Fed Cas. 1150 (1842).

The assignee in bankruptcy had sold certain property of the bankrupt upon which a creditor had a valid lien by judgment, from which the bankrupt had taken an appeal, but had not perfected it. The court decided that the creditors must be paid in full out of the proceeds of the sale. In re Gold Mt. M. Co., 3 Saw. 601; 10 Fed. Cas. 556.

On March 14, E. & C. attached the property of R. & B., and, having recovered judgment, took out an execution on the 23d of June, and levied on the attached goods. On the 17th of April a petition in bankruptcy was filed against the judgment debtors. It was held that the attachment constituted a lien under section 2 of the Bankrupt Act of 1841. Haughton et al. v. Eustis et al., 5 Law Rep. 505; 11 Fed. Cas. 841 (1842).

The first lien on a bankrupt's lands was a judgment. Second to that was a trust deed on one parcel, which contained a waiver of homestead. It was held that the deed removed the right of homestead, but that the judgment must be paid first; also that the grantee under the trust deed was only subrogated as to the parcel covered by his lien. In re Cogbill, 2 Hughes, 313; 6 Fed. Cas. 1.

Where a debtor made an assignment to trustees which was declared void, and the trustees thereupon released the property to the assignee in bankruptcy, held, that the assignee took it subject to the liens of creditors who had recovered judgments subsequently to the fraudulent conveyance and prior to the filing of the petition in bankruptcy. In re Beadle, 5 Saw. 351; 2 Fed. Cas. 1106.

Where a levy was made before, and the property sold after the filing of the petition, the court may set aside the sale, or confirm it and permit the judgment debtor to retain the amount of his claim, paying only the surplus to the assignee. In re Hufnagel, 12 N. B. R. 554; 12 Fed Cas. 819.

A petition in bankruptcy was filed after the creditor had attached certain lands of the debtor, and before the entry of judgment in the attachment suit. It was held that the lien of the attaching creditor was not avoided by section 14 of the Act of 1867 (section 5044, R. S.), and that he was entitled to priority. Hudson v. Adams et al., 18 N. B. R. 102; 12 Fed. Cas. 806.

A judgment entered in good faith on the day before the filing of the petition in bankruptcy on a note with warrant of attorney, when all the parties considered the debtor solvent, will not be declared void in bankruptcy proceedings. Armstrong v. Rickey, 2 N. B. R. 473; 1 Fed. Cas. 1144.

Property held by fraudulent purchase from a bankrupt is subject to the lien of a judgment against the bankrupt; so also is property held by a bankrupt after the entry of a judgment against him and before the commencement of the proceedings in bankruptcy. In re Badenheim, 15 N. B. R. 370; 2 Fed. Cas. 325.

A creditor who attached mortgaged goods and chattels, and then paid off the amount due on the chattel mortgage, the attachment having been dissolved by proceedings in bankruptcy, has a lien for the amount paid which must be satisfied by the assignee upon the sale of the goods to which the lien attached. In re Baker, 1 Hask. 593; 2 Fed. Cas. 433.

Under the laws of Colorado an execution is a lien on the debtor's property from the time it is delivered to the sheriff to be executed. It was held that a lien so acquired will not be defeated by a petition in bankruptcy filed after the delivery, and prior to the levy of the execution. Bartlett v. Russell, 4 Dill. 267; 2 Fed. Cas. 978.

The sheriff had possession of the goods of H. by virtue of an attachment, when C. placed an execution in his hands. Later, on the same day, the debtor filed a petition in bankruptcy. The circuit court, reversing the district court, held that the property being in the possession of the sheriff under the attachment, the lien of the execution attached to it and continued, notwithstanding the attachment was vacated by the proceedings in bankruptcy, and that C.'s claim must be paid in full. In re How, 14 Blatchf. 257; 12 Fed. Cas. 858.

Before the filing of the petition in bankruptcy, a creditor had filed a bill to subject certain equitable interests of the debtor to the payment of his judgment. The court decided that this proceeding constituted a lien under the bankrupt law, and refused to issue an injunction to restrain the creditor from proceeding in the state court. Clarke v. Rist et al., 3 McLean, 494; 5 Fed. Cas. 978 (1844).

The sheriff of the county where the bankrupt resided was subsequently appointed assignee in bankruptcy. As sheriff, he had possession of the bankrupt's property under a writ of attachment and several executions. With the consent of the creditors, he sold the property as assignee. The court decided that the " bankruptcy proceedings did not enlarge the judgment liens, nor change their place, but left them exactly as and where they were before." In re Nelson, 9 Ben. 238; 17 Fed. Cas. 1312.

A levy of an execution in pursuance of a judgment obtained without fraud or collusion in a state court prior to the commencement of proceedings in bankruptcy was held to give a lien that must first be satisfied under sections 14 and 20 of the Act of 1867. In re Moulton et al., 17 Fed. Cas. 917.

A collection agency acting for a creditor of the bankrupt secured a judgment by confession less than four months prior to the adjudication and collected the amount of the judgment, but had not remitted it to the creditor, and the latter had no knowledge respecting the condition of the bankrupt. It was held that the judgment debtor's assignee in bankruptcy could not recover the amount from the creditor. Hoover v. Wise, 91 U. S. 308.

The laws of Illinois made an execution a lien on all the personal property of the defendant within the county as soon as it is placed in the hands of the sheriff, and for ninety days thereafter. Held, in that state, that the petition in bankruptcy being filed within that time, the lien follows the property in the hands of the assignee and the execution must be paid out of the proceeds. In re Weeks, 2 Biss. 259; 29 Fed. Cas. 577.

A judgment under a warrant of attorney was held to be a valid lien where the creditor did not know of the insolvency of the debtor, and it was not given in contemplation of bankruptcy. Ibid.

Where it appears that a greater amount can be realized to the estate of the bankrupt, the court will enjoin a sale of goods levied on under a valid execution, and direct a disposition of the property by the assignee at private sale, so marshalling the proceeds as to preserve the execution creditor's lien. In re Schnepf, 1 N. B. R. 190; 21 Fed. Cas. 719 (1867).

Certain creditors of an insolvent firm made it a loan for which they took a joint judgment. Later, two of their number secretly took a judgment note from the debtors for their original claims, and entered up judgment and seized all the property of the debtors. The debtors having been declared bankrupts, the court held that this was a fraud upon the parties to the original judgment, and that the execution thus obtained should be postponed to the execution on the previous judgment. Gaskill et al. v. Betton et al., 8 Fed. Rep. 746.

In a case where a valid judgment had been entered in a state court, and a levy made before the proceedings in bankruptcy, and the sale of the property was enjoined and the sheriff was subsequently allowed to sell the goods, which were perishable, it was held that the lien of the levy must be respected, and that the sheriff should apply the proceeds of the sale, first, to the payment of the execution, paying the surplus to the assignee in bankruptcy, or to the clerk of the court if there was no assignee. In re Bersten, 2 Ben. 244; 3 Fed. Cas. 282.

After a creditor had obtained judgment against his debtor, which became a lien on real estate of sufficient value to satisfy the judgment, the debtor made an assignment of all his property, preferring the judgment creditor over all others. The assignee under this assignment paid the judgment in full. Proceedings in bankruptcy having been commenced under the Act of 1841, the assignee brought an action against the judgment creditor to recover back the money paid by the voluntary assignee. The court held that no fraudulent preference could be predicated upon the payment of the judgment, as it had become a matter of legal right. Livingston et al. v. Bruce, 1 Blatchf. 318; 15 Fed. Cas. 658 (1843).

A judgment creditor placed an execution in the hands of the sheriff to be levied on the stock of the debtor, but told him not to close their store. The sheriff took the key of the store and placed a custodian in charge and indorsed the levy on the writ. A few days afterward, while the custodian was absent, the marshal took possession under a warrant issued in bankruptcy proceedings. Held, that the levy was good, and that the assignee must pay the judgment debt out of the proceeds of the sale of goods in his hands. In re Hughes et al., 11 N. B. R. 452; 12 Fed. Cas. 833.

A tenant of a hotel gave a mortgage on the furniture to the owner of the property as security for rent. Subsequently, executions were levied on the furniture under judgments recovered after the execution of the mortgage, and against the opposition of the bankrupt. The assignee in bankruptcy brought a suit to have the mortgage and the judgments set aside. The court set aside the mortgages, but awarded the proceeds of the furniture to the creditors who had levied executions. Platt v. Stewart, 13 Blatchf. 481; 19 Fed. Cas. 852.

W. brought a suit in Louisiana against F. for the foreclosure of a mortgage, and on the 27th of November a judgment was entered and the property advertised for sale. On the 7th of December, F. filed a petition in bankruptcy in New York, and an adjudication was subsequently entered therein. The sale of the property in Louisiana under the foreclosure took place on the 6th of January following. Subsequently, the assignee in bankruptcy in New York filed a bill in the United States circuit court for the district of Louisiana to set aside the sheriff's sale, and for the appointment of a receiver, and for an injunction to prevent W., who had purchased the property at the sheriff's sale, from meddling therewith. Justice Bradley, in denying the motion for the appointment of a receiver and an injunction, said that the assignee took only the bankrupt's interest in the property; that it was subject to the lien of the foreclosure proceedings, and that the sale was valid. Goddard v. Weaver, 1 Woods, 257; 10 Fed. Cas. 513.

Liens by Legal Proceedings, when Void.

Under the Act of 1800, an attaching creditor could only be paid a ratable part of his claim with other creditors. Harmon et al. v. Jamesson, 1 Cranch C. C. 288; 11 Fed. Cas. 555 (1806).

The lien of a prior execution which has not been levied is divested by the seizure of the goods of the defendant by the United States marshal under a warrant in bankruptcy. In re Tills et al., 11 N. B. R. 214; 23 Fed. Cas. 1273.

The commencement of supplementary proceedings under the laws of a state does not create a lien in favor of the judgment creditor until a receiver has been appointed. In re Wheeler et al., 19 N. B. R. 385; 29 Fed. Cas. 877.

No lien attaches under an execution levied on a debtor's goods after a petition is filed on which he is adjudged a bankrupt. Russell v. McCord, 17 N. B. R. 508; 21 Fed. Cas. 51 (1878).

A creditor having attached lands of the debtor, the latter made a deed of the same to the former. Held, that other creditors who afterward attached the land could not avoid the conveyance. Ashuelot Savings Bank v. Frost, 19 Fed. Rep. 237.

The bankrupt had given a warrant of attorney ten months before the commencement of proceedings, and judgment had been entered within two months, after which the property was sold at private sale with the consent of the debtor. This was held to be void under section 5128, R. S., as against the assignee in bankruptcy. Balfour v. Wheeler, 15 Fed. Rep. 229.

A creditor who had recovered a judgment against the bankrupt immediately after he made a general assignment, and who had made a levy under such judgment, was held not to have any priority over an assignee in bankruptcy appointed by reason of acts committed prior to the making of the assignment. Reed v. McIntyre, 98 U. S. 507.

Though the judgment be rendered by a competent court, and the proceedings regular, admissions of the judgment plaintiff are sufficient to show it to be a fraud on the bankruptcy law and void. Lehman v. La Forge, 42 Fed. Rep. 493.

A judgment by default was procured on a debt before it became due by suppressing facts as to its maturity. The judgment lien should be set aside, not as a fraudulent preference, but as a lien fraudulently obtained by the creditor without any assistance from the bankrupt. Partridge v. Dearborn, 9 N. B. R. 474; 18 Fed. Cas. 1279 (1873).

On a bill in equity by a creditor, another creditor who had levied on personal property under a judgment recovered more than six months before the filing of the voluntary petition, was enjoined from selling the property levied upon until the appointment of an assignee. Eastburn et al. v. Yardley, 30 Leg Int. 404; 8 Fed. Cas. 266.

A court of bankruptcy will not entertain a claim of priority in behalf of a judgment creditor who had failed for thirteen years to record his judgment in the county in which the land was located, and had also neglected to prove his judgment in bankruptcy until after the proceeds of the sale of the land had been distributed. In re Dunn, 2 Hughes, 169; 8 Fed. Cas. 93.

From the imperfect report of the case cited, it appears that the petition in bankruptcy was filed on the same day that an execution against the bankrupt reached the sheriff, but a short time before. The court held that the creditor acquired no lien by virtue of the execution as against the assignee in bankruptcy. In re Bear et al., 7 Fed. Rep. 583.

The filing of a bill for a discovery against a debtor before the commencement of voluntary proceedings does not give the plaintiff creditor any prior right to the assets. The assignee when appointed may take the management of the suit or not at his own election. If he does not, and allows the plaintiff to proceed to a final decree, he will be obliged to respect the lien or right of priority secured by such decree. Smith v. Gordon et al., 2 N. Y. Leg. Obs. 325; 22 Fed. Cas. 554 (1843).

A creditor's bill had been filed against a bankrupt in a state court, but no other proceedings had therein. It was held that it gave no lien to the moving creditor as against the assignee in bankruptcy of the defendant. Case of Smith, 1 Penn. L. J. 149; 22 Fed. Cas. 415 (1842).

After a debtor had made an assignment for the benefit of his creditors, judgments were entered against him. Within sixty days after the assignment, he filed a petition in voluntary bankruptcy. The court held that the assignment was valid at common law, and only void under the bankrupt law as against the assignee; and that as the property had been con-

veyed to the trustee before the judgments were entered, they constituted no lien upon the debtor's property. In re Walker, 18 N. B. R. 56; 29 Fed. Cas. 3.

The holder of a promissory note given for merchandise, not knowing that the maker was insolvent, brought suit and recovered judgment which became a lien upon real estate of the maker. The maker subsequently became bankrupt, and his property was sold by the assignee. A petition of the judgment creditor that his judgment be paid in full out of the proceeds of the sale was denied by the court on the ground that the transaction was *prima facie* fraudulent under the Act of 1867. In re Krum, 7 Ben. 5; 14 Fed. Cas. 872.

The district court may, by the exercise of its summary jurisdiction, restrain the sale of property after a judgment by confession which operates as a fraudulent preference, or it may require the petitioning creditor to bring a separate suit. Such a suit may be brought in the circuit court, and after the election of the assignee, he may be substituted as complainant. Irving v. Hughes, 2 N. B. R. 6; 13 Fed. Cas. 111.

It requires no other judicial proceedings to dissolve an attachment that was issued within four months before the commencement of proceedings in bankruptcy. The petition, when it is followed by adjudication, operates *ipso facto*. Bracken v. Johnston, 4 Dill. 518; 3 Fed. Cas. 1120.

A confession of judgment that is valid by the laws of the state is void if in contravention of the Bankrupt Act. Such a judgment is not a lien upon the bankrupt's property. Atkinson v. Purdy, Crabbe, 551; 2 Fed. Cas. 112 (1844).

A son of the bankrupt was enjoined from selling property on a judgment which he had secured against the bankrupt when he had reason to believe him to be insolvent. A motion to dissolve the injunction was denied. In re Bloss, 4 N. B. R. 147; 3 Fed. Cas. 733.

A sheriff seized goods on an attachment on the 8th of January. On the 10th the debtors filed their petition in bankruptcy, and were subsequently adjudged bankrupts. Held, that the adjudication dated back to the 10th and dissolved the attachment, and that the sheriff had a lien only for fees which had been accrued. In re Housberger et al., 2 Ben. 504; 12 Fed. Cas. 596.

Where an insolvent debtor allowed his brother to take a judgment against him to the exclusion of his other creditors, the transaction was held to be a preference, and a petition to have the execution declared a lien upon the proceeds of his estate in bankruptcy was denied. In re Baker, 14 N. B. R. 433; 2 Fed. Cas. 437.

Judgment creditors who had been enjoined from selling the property of the bankrupt under a levy of their execution, petitioned the court to modify the injunction so as to permit them to sell enough of the property, which they alleged to be perishable, to satisfy their judgment. The court held their petition to be defective in that it failed to negative the circumstances which, under section 35 of the Act of 1867, made the judgment, execution and levy void. In re Bins, 4 Ben. 452; 3 Fed. Cas. 420.

Under section 14 of the Act of 1867, an attachment levied within four months before the commencement of proceedings in bankruptcy is dissolved, and if the property has been sold and the proceeds paid over to the attaching creditor, the assignee can recover them. McCord v. McNeil, 4 Dill. 173; 15 Fed. Cas. 1301.

An attachment issued less than four months before the filing of the petition in bankruptcy is dissolved by the commencement of the proceedings, and everything done subsequent to the filing of the petition is invalid. Long v. Conner, 17 N. B. R. 540; 1 Fed. Cas. 823.

A warrant of attorney by an insolvent debtor executed within sixty days of the commencement of proceedings in bankruptcy was held to be void under the Act of 1841, and it was further held that no valid proceedings could be predicated thereon. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 263 (1843).

The sale of the bankrupt's land on an execution levied after the adjudication gives the purchaser no title as against the assignee, notwithstanding the judgment was entered before. Davis v. Anderson et al., 6 N. B. R. 145; 7 Fed. Cas. 103.

An attachment upon property of the bankrupt for an amount equal to its full value having been dissolved by an adjudication, a judgment creditor who has made a levy subject to such attachment has no priority as against the assignee in bankruptcy; otherwise, where he has prosecuted the suit to judgment and levied upon the property In re Steele et al., 7 Biss. 504; 22 Fed. Cas. 1190.

No creditor can acquire a lien by attachment or otherwise on the property of the bankrupt after the filing of a petition. In re Tifft, 19 N. B. R. 201; 23 Fed. Cas. 1213.

A judgment creditor in North Carolina was prevented by the military commandant from making a levy. Other creditors, having judgments subsequent to his, afterward made a levy. Later, the debtor was adjudicated in bankruptcy. It was held that the first judgment creditor had no lien. In re Mebane, 3 N. B. R. 347; 16 Fed. Cas. 1304.

A judgment by confession entered within two months before bankruptcy, and all proceedings under it, were held to be void where the debtors had broken up their business. McLean v. LaFayette Bank et al., 3 McLean, 587; 16 Fed. Cas. 264 (1846).

The preferred creditor had no knowledge of his debtor's insolvency when a warrant of attorney was given to him, but was chargeable with such knowledge at the time he entered judgment in pursuance of such warrant. The court decided that the assignee in bankruptcy could recover of the creditor money received by him on the sale of the property under such judgment. Golson v. Neihoff, 2 Biss. 434; 10 Fed. Cas. 569.

There is no lien in favor of the plaintiff or the sheriff to secure the fees and costs of an attachment made within four months before the commencement of proceedings in bankruptcy. In re Davis, 1 Hask. 232; 7 Fed. Cas. 52.

For the purpose of giving certain creditors a preference, a bankrupt suf-

fered his property to be taken on an execution against him. The creditor had reason to believe that the debtor was insolvent. It was held that the transaction was void under section 35 of the Act of 1867, and that the creditors acquired no valid lien. In re Belew, 4 Ben. 135; 2 Fed. Cas. 559.

An assignee in bankruptcy brought a suit to remove a cloud on the title to property in his hands, alleged to have been created by a voluntary assignment for the benefit of creditors, which was valid under the laws of the state, but was subsequently set aside upon the application of the assignee in bankruptcy. The court held that such a judgment was not a cloud upon the title. Belden et al. v. Smith et al., 16 N. B. R. 302; 3 Fed. Cas. 83.

Under the Act of 1867 no lien could be acquired or enforced by any proceeding in a state court commenced after a petition in bankruptcy was filed; though in cases where jurisdiction had been previously acquired by state courts of a suit to enforce a valid lien, such jurisdiction would not be divested. This applies to liens for rent, which are on the same footing as other enforcible liens. In re Wynne, Chase, 227; 4 N. B. R. 23; 30 Fed. Cas. 752 (1868).

A bankrupt held certain notes to secure indorsements made for R. G., who held one of R.'s notes, indorsed by the bankrupt, reduced it to judgment against the bankrupt, and then filed a summary petition against the assignee in bankruptcy to have the proceeds of the collaterals appropriated to the payment of his judgment. Held, that as the aggregate of the accommodation notes outstanding exceeded the proceeds of the collaterals, the district court would not summarily order the payment of G.'s judgment. Hurst v. Teft, 12 Blatchf. 217; 12 Fed. Cas. 1044.

When a general assignment is set aside as a violation of the Bankrupt Act the title of the assignee dates back to the time of the voluntary assignment, and avoids the levy of an execution subsequently made. Waring v. Buchanan et al., 19 N. B. R. 502; 29 Fed. Cas. 228.

Confessions of judgment, whether voluntary or procured by duress, made with a view of giving preferences, the debtor being insolvent, are fraudulent, and the property levied on thereunder may be recovered by the assignee in bankruptcy. Wilson v. Brinkman, 2 N. B. R. 468; 30 Fed. Cas. 114.

An execution delivered to the sheriff before bankrupt proceedings are instituted against the debtor does not create a lien superior to the right of the assignee in bankruptcy. Quaere, Whether a levy of such execution before commencement of bankruptcy proceedings would give a lien as against the assignee. In re Rust, 1 N. Y. Leg. Obs. 326; 21 Fed. Cas. 91 (1843).

A judgment by confession within four months before the commencement of voluntary proceedings, the creditor having reason to believe the debtor insolvent, was held to be a fraud upon the Bankrupt Act of 1867, though the judgment was for a pre-existing debt. Vogel v. Lathrop, 4 N. B. R. 439; 28 Fed. Cas. 1246.

The commencement of proceedings in bankruptcy dissolves all attachments without reference to the property upon which they are levied; the object of the Act being to stop at once all proceedings against the bankrupt in any other court, and to bring all matters and questions between the bankrupt and his creditors into the court of bankruptcy for final settlement. In re Stevens, 2 Biss. 373; 23 Fed. Cas. 2.

A constable having possession of property by virtue of an attachment which is dissolved by proceedings in bankruptcy cannot retain it until his fees are paid, but must apply to the court of bankruptcy to be paid out of funds in the hands of the assignee. Ibid.

Within four months before the commencement of proceedings, a judgment was obtained by the defendant to subject a fund to the payment of a judgment against the bankrupt, and the fund was paid to the plaintiff. It was held that the assignee in bankruptcy could recover the amount. Street v. Dawson, 4 N. B. R. 207; 23 Fed. Cas. 233.

Judge Hoffman of the district court of California, following McIntyre v. Reed (98 U. S. 507), held: "That case decides that where an assignment for the benefit of creditors, valid by the state laws or the common law, is set aside at the instance of an assignee in bankruptcy, the latter will take the property free of the liens of any judgments obtained after the execution of the assignment and which would not have attached had the assignment been allowed to stand." In re Temple, 6 Saw. 97; 23 Fed. Cas. 838.

The execution creditor knew that his debtor could not pay his debts; that he had committed an act of bankruptcy, and when sued for a large amount did not defend, or attempt to prevent judgment, levy and sale. Held, that the levy of his execution gave him no valid lien as against the assignee in bankruptcy. Vanderhoof v. City Bank of St. Paul, 1 Dill. 476; 28 Fed. Cas. 967.

"The appointment of an assignee in bankruptcy relates back and gives him title to the estate, real and personal, legal and equitable, rights and interests, and things in action which belonged to him at the time on the presentation of the petition. I find, therefore, no room for hesitation in saying that from and after the filing of the petition, the defendants could acquire no interest by receivership or otherwise in the property of the debtor which the decree in bankruptcy cannot displace or override, and that, therefore, the defendants are on that ground entitled to no benefit or advantage as against the plaintiff over anything done under the orders of the state court, made after the petition of the creditors was presented." Smith v. Buchanan et al., 8 Blatchf. 153; 22 Fed. Cas. 458.

An insolvent debtor gave his notes with warrants of attorney to creditors who had knowledge of his insolvency. Two months later, the latter took judgment in a state court, and an execution was issued and levied upon the debtor's property. Ten days thereafter a petition in bankruptcy was filed against the debtor, and the district court enjoined the judgment creditors from proceeding further with the sale under their execution. The property was placed in the hands of the assignee, who sold it and

paid the proceeds into court. A petition of the judgment creditors to have the whole of their judgment paid in preference to the claims of other creditors was refused. In re Herpich, 7 Biss. 387; 12 Fed. Cas. 40.

Liens for Rent.

The Bankrupt Act of 1867 was held to respect liens for rent due, under the laws of the state. In re Dunham et al., 27 Leg. Int. 404; 8 Fed. Cas. 35.

A landlord can only establish a lien for rent due from the bankrupt by complying with the provisions of the laws of the state within which his premises are situated. In re Dyke et al., 9 N. B. R. 430; 8 Fed. Cas. 214.

Held, in South Carolina, under the statute of Anne, that a landlord has a lien on the personal property of his tenant which the latter's assignee in bankruptcy is bound to respect. In re Trim, 2 Hughes, 355; 24 Fed. Cas. 197.

When a tenant, by an express stipulation in the lease, gives the landlord a lien on specific personal property for the rent, the lien is valid against the assignee in bankruptcy. McLean v. Klein, 3 Dill. 113; 16 Fed. Cas. 252.

A landlord has no lien upon goods and chattels for rent that accrued after the bankruptcy and after the premises were surrendered although the law of the state gave him a lien to secure rent for one year. Bailey v. Loeb et al., 2 Woods, 578; 2 Fed. Cas. 376.

A landlord whom a bankrupt promised to pay in crops for rent and other indebtedness has no lien on the crops against the general creditors. Brock v. Terrell, 2 N. B. R. 643; 4 Fed. Cas. 198.

It was held that the lien which the laws of South Carolina gave a landlord must be respected in bankruptcy proceedings, and that it was not affected by the fact that the tenant had given him a preference in the voluntary assignment. Watson v. Lemar, 29 Fed. Cas. 424 (1842).

Held, under the laws of Illinois and the Bankrupt Act of 1867, that where a landlord had failed to make a levy of distress for rent prior to the assignment of the assignee in bankruptcy, his right was barred. Morgan v. Campbell, 22 Wall. 381.

It was held in Louisiana that the lien of a landlord upon the goods of his lessee did not attach to the proceeds of a policy of insurance, when the goods had been destroyed by fire. In re Reis, 3 Woods, 18; 20 Fed. Cas. 510.

It was held that the Act of 1867 gave a landlord no lien or preference over other creditors as to a claim for rent unless he had made distress under the law of the state. In re Butler, 6 N. B. R. 501; 4 Fed. Cas. 894.

Property of the bankrupt being in the hands of a sheriff as a pledge for the payment of rent already due, the court of bankruptcy has no power to take it out of the hands of the sheriff and deliver it to the assignee. Marshal v. Knox, 16 Wall. 551.

In a case where an assignee in bankruptcy took possession of mortgaged property and refused to deliver it to the mortgagee on demand, it was held that he had no lien on it for the rent of the building in which it was kept after such demand. In re Pierce et al., 2 Low. 343; 19 Fed. Cas. 629.

Personal property remaining on the leased premises of the bankrupt were levied upon by the landlord in distress for rent, two days after the adjudication. It was held that his lien was good. In re Leppein, 1 Penn. L. J. 223; 15 Fed. Cas. 353.

A landlord having made distress for rent accrued at the time of the adjudication, the court ordered the assignee to pay it, and at the same time authorized him to pay at the same rate for storage so long as he occupied the premises. In re Brown, 4 Fed. Cas. 327.

If the assignee remains in possession of leased premises after adjudication, the landlord has the same lien upon the goods on the premises for rent as in the case of other tenants; and the same principle is applied to the bankrupt himself. In re Commercial Bulletin Co., 2 Woods, 220; 6 Fed. Cas. 220.

A certificate granted by the court in distress for rent under the laws of Illinois gives a perfected lien to the landlord if issued before the commencement of proceedings in bankruptcy. In re Joselyn, 2 Biss. 235; 13 Fed. Cas. 1159.

Where the landlord of a bankrupt has made distraint for rent, and subsequently, by agreement, the goods were sold by the assignee in bankruptcy, the landlord is entitled to the amount of his claim from the money in the hands of the assignee. This decision was made under the laws of Pennsylvania, which allows distraint for one year only. In re Appold, 7 Am. L. Reg. 624; 1 Fed. Cas. 1075.

The circuit court, reversing the district court, decided through Justice Bradley, that the right to distrain for rent is a lien within the Act of 1867, and that in Mississippi a landlord is entitled to a preference from the proceeds of the sale of property on the leased premises, notwithstanding the laws of that state provided that he is obliged to sue out an attachment for the purpose of effecting distress for rent. Austin v. O'Reilly, 2 Woods, 670; 2 Fed. Cas. 234.

A lease gave the landlord a lien upon all furniture in the leased premises or to be placed therein by the tenant. So far as this attempted to give a lien on articles not in the store at the time the tenant took possession, it was held to be void against the tenant's subsequent assignee in bankruptcy; but valid as to articles in the store at that time. In re Eckenroth, 8 Fed. Cas. 286.

A provision in the lease that the tenant might remove all fixtures which he put in, at the end of his term, provided he had kept all the covenants, does not cover furniture though it were fitted to the shop; but creates a valid lien on fixtures annexed to the freehold, and as to such fixtures, the assignee can only take them on payment of the arrears of rent. Ex parte Morrow et al., 1 Low. 386; 17 Fed Cas. 845.

Bankers' Liens.

A banker has a lien on securities in his hands for a general balance of his account, which is good against the assignee in bankruptcy of the owner of the securities. Kelly et al. v. Phelan, 5 Dill. 228; 14 Fed. Cas. 268.

In the case of a bank that, by its by-laws, had a lien upon the shares of stockholders for their indebtedness to the bank, and a stockholder so indebted who had been adjudged a bankrupt, it was held that the bank was not bound to transfer its shares to the assignee in bankruptcy. In re Dunkerson et al., 4 Biss. 227; 8 Fed. Cas. 48.

A bank has a right to apply a balance to the credit of the depositor on matured paper of such depositor, and to retain such balance as against the assignee in bankruptcy. In re Petrie et al., 5 Ben. 110; 19 Fed. Cas. 383.

A bank that had received security from a debtor when it had no reasonable cause to believe him to be insolvent was allowed to retain it against the assignee in bankruptcy. Rankins v. Third Nat. Bank et al., 14 N. B. R. 4; 20 Fed. Cas. 279.

A bank to whom the bankrupt is indebted on a demand note has a lien on the proceeds of drafts delivered to it for collection by the bankrupt, though they were collected after the filing of the petition in bankruptcy. In re Farnsworth et al., 5 Biss. 223; 8 Fed. Cas. 1056.

A private bank may have a lien under its by-laws on the shares of a stockholder for his indebtedness to the bank which will be respected by a court of bankruptcy, notwithstanding the indebtedness is represented by an indorsed note. In re Morrison, 10 N. B. R. 105; 17 Fed. Cas. 831.

The word "lien" in section 2 of the Act of 1841 was held to embrace equitable as well as legal liens, which were to be ascertained by the laws of the several states. Thus a creditor's bill created such a lien, and when such a suit is instituted and prosecuted in good faith, it will be respected against a decree of bankruptcy where the bill was filed before the commencement of the proceedings. Ex parte General Assignee, 5 Law Rep. 362; 10 Fed. Cas. 164 (1842).

A company had made calls upon its members for the balance due on their stock. To secure money borrowed from a bank, it authorized the bank to collect the calls, and delivered to it a list of the stockholders and the amount due from each. Subsequently, the company went into bankruptcy, and it was held that the transaction between it and the bank amounted to an equitable assignment which a court of bankruptcy was bound to respect. Farmers & Drovers' S. Bank v. Kas. City Pub. Co., 3 Dill. 287; 8 Fed. Cas. 1027.

The individual members of a bankrupt firm owned stock in a bank. Under the provisions of the by-laws, the bank had a lien on the shares of stockholders for their debts to the bank. The court decided that the lien was valid, both for their individual and partnership debts. In re Bigelow, 2 Ben. 469; 3 Fed. Cas. 341. Subsequently the supreme court of the United States decided that a national bank could not acquire a valid lien upon the shares of its stockholders. Bullard v. National Eagle Bank, 18 Wall. 589.

The bankrupt was a stockholder in a national bank which claimed a lien on his shares to secure an indebtedness. The assignee in bankruptcy demanded the delivery of the shares to him, which was refused, and he brought an action for their value. The court of bankruptcy decided that

as a judgment in trover vested the title of the property in the defendant, and the defendant in this case could not hold the property, being forbidden by law to own its own stock, the action could not be maintained. Meyers v. Valley Nat. Bank, 18 N. B. R. 34; 17 Fed. Cas. 250.

Mechanics' Liens.

A state law giving mechanics and others a lien is not in conflict with the policy of the Bankrupt Act. In re Coulter, 2 Saw. 42; 6 Fed. Cas. 637.

A mechanic's lien under state laws was held to be preserved by the Act of 1867, but the lien claimant should not proceed in the state courts after a petition in bankruptcy is filed; the court in bankruptcy will protect his rights under the lien. In re Cook et al., 3 Biss. 116; 6 Fed. Cas. 381.

Where the statute gives a lien from the time that certain labor is performed, and is not made contingent upon other requirements, the lien takes effect although the requirements as to recording, etc., are not completed until after the vesting of the bankrupt's estate in the assignee. Sabin v. Connor, 21 Fed. Cas. 124 (1871).

The laws of Oregon are such that the lien of a mechanic or materialman must be filed within three months after the completion of the building. Where the proceedings in bankruptcy were commenced within three months after the doing of the work, it was held that they did not impair the right of the lien creditor to file his notice. In re Coulter, 2 Saw. 42; 6 Fed. Cas. 637.

Where the work for which liens were claimed was partly done before the filing of the petition in bankruptcy, but the claim was not filed until afterward, it was decided under the mechanics' lien law of New Jersey that the lien did not exist at the time of the commencement of proceedings, and could not be recognized. In re Dey, 3 Ben. 450; 7 Fed. Cas. 625. This decision was modified on review by the circuit court, which held that the lien attached as of the time when the labor was performed, and that it was superior to a mortgage given after the work had commenced, and to the rights of the assignee. s. c., 9 Blatchf. 285; 7 Fed. Cas. 627.

Liens, Generally.

A creditor, having knowledge of the insolvency of his debtor, set up a factor's lien upon certain property of the latter. This was held to be a fraud under the Act of 1867. Nudd v. Burrows, 91 U. S. 426.

A statutory lien asserted upon property of a bankrupt is not effective unless the requirements of the statute have been complied with before the property passes to the assignee in bankruptcy. In re Sabin, 12 N. B. R. 142; 21 Fed. Cas. 120 (1875).

The lien of a commision merchant for advances and commissions was held to be valid under section 5128, R. S. In re Roseberry et al., 8 Biss. 112; 20 Fed. Cas. 1892.

An attorney, having possession of certain notes belonging to the bankrupt, included them in the schedule which he drew and filed with the

bankrupt's petition. It was held that this did not destroy his lien on the notes for services in previous litigation. In re Brown, 1 N. Y. Leg. Obs. 69; 4 Fed. Cas. 339.

A vendor's lien does not pass to the assignee of a note given in part payment of the purchase price, and he has only an unsecured claim provable in bankruptcy. In re Brooks, 2 N. B. R. 466; 4 Fed. Cas. 246.

Where there is a maritime lien on a vessel, the assignee takes the property subject to it. The holder of such a lien, after the filing of a petition in bankruptcy by the owner of the vessel, can seize it under a libel in another district; and the latter court has jurisdiction for the purpose of hearing and determining the lien, and the court of bankruptcy will be governed by the decision. The Ironsides, 4 Biss. 518; 13 Fed. Cas. 103.

Courts of bankruptcy recognize and enforce all valid liens. Maritime liens on vessels as for seamen's wages and supplies furnished in ports of other states will, under admiralty law, take precedence of mortgages even of prior date. Statutory liens for supplies, etc., furnished in a port of the home state will not be given precedence, however, over prior mortgages. In re Scott, 3 N. B. R. 742; 21 Fed. Cas. 798 (1869).

The bankrupt, a merchant at Richfield, Wis., bought a stock of goods at Chicago, and had them sent to Milwaukee with the intention of selling them there and using the proceeds to pay certain debts. He was insolvent at the time, and never intended to pay for the goods. Held, that the vendor had a right to recover the goods against the assignee in bankruptcy if they could be identified. Donaldson v. Farwell et al., 5 Biss. 451; 7 Fed. Cas. 883; affirmed in 93 U. S. 631.

Money was collected by collecting agents six years prior to their becoming bankrupts, and converted to their general business. No specific lien, it was held, existed on the funds in the hands of the assignee in favor of the creditors for whom the money was originally collected by the bankrupts. In re Netterlein, *supra*.

A wife had a mortgage on lands of the husband at the time of their marriage. The husband afterward became bankrupt, the wife not being a party to the proceedings. The mortgaged lands (having been, presumably, sold by the assignee) were afterward acquired by the husband, who mortgaged them. It was held that the later mortgage had priority; and that in fact the wife's mortgage lien had been extinguished by the discharge in bankruptcy of her husband. Billings, J., C. C. E. D. Louisiana. Fleitas v. Mellen, 39 Fed. Rep. 129 (1889).

A private warehouseman issued receipts for his own property in his own warehouse and delivered them as security for a debt. Held, that the pledgee acquired no title to the property described in the receipts as against other creditors in bankruptcy. Adams v. Merchants' Nat. Bank, 2 Fed. Rep. 174.

The holder of a check which had not been presented to the bank until the drawer had been adjudged a bankrupt has no lien, and is entitled to no priority. In re Smith, 15 N. B. R. 459; 22 Fed. Cas. 405.

The bankrupt had promised to pay a creditor out of a particular fund when received, but no notice of the agreement was given to the party who was to pay the money. Held, that the promise, under the circumstances, created no lien upon such fund. Ex parte Tremont Nail Co., 16 N. B. R. 448; 24 Fed. Cas. 183.

The bankrupts had received certain money to invest in stock, and took it in their own name and hypothecated it as security for a loan. Later, they deposited securities to release the pledge, and the securities were sold by the pledgee. Held, that the party whose money had been invested was not entitled to the proceeds, and must share with the general creditors. Ungewitter v. Von Sachs, 4 Ben. 167; 24 Fed. Cas. 531.

"The proceedings in bankruptcy commenced by one or more of the creditors of the bankrupt, for the benefit of all, are in the nature of an equitable attachment as against the equitable estate of the bankrupt; and the assignee, as the representative of all the creditors of the bankrupt, and whose title relates back to the time of the filing of the petition, thereby becomes the owner of such equitable interest, with an equity superior even to a judgment creditor who has an execution returned unsatisfied, but who had obtained no equitable lien by filing a creditor's bill or taking other proceedings to reach such equitable estate." In re Hinds et al., 3 N. B. R. 351; 12 Fed. Cas. 202.

The Act of 1867 (section 5044, R. S.) was held to vest the title of the bankrupt's property in the assignee as of the time when the petition was filed. It follows that no subsequent act can subject such property to a lien. Sicard v. Buffalo, N. Y. & P. R. Co., 15 Blatchf. 525; 22 Fed. Cas. 64.

The presentation of a draft against a general balance, without acceptance, does not create a lien in favor of the holder. Randolph et al. v. Canby et al., 11 N. B. R. 296; 20 Fed. Cas. 257.

No lien can be created upon property of the bankrupt, after the commencement of proceedings, by the bankrupt himself, or by judgment. McLean v. Rockey et al., 3 McLean, 235; 16 Fed. Cas. 283 (1843).

A lien under a state law is not revived by proceedings in bankruptcy when it lapsed by the expiration of the time fixed by law for the lien claimants to enforce it. In re Brunquest, 7 Biss. 208; 4 Fed. Cas. 482.

A debtor pledged a musical instrument to a creditor, and subsequently borrowed it, and had possession of it several months before going into bankruptcy. It was held that the debtor had lost his lien on the property as against the assignee in bankruptcy. In re Harlow, 10 N. B. R. 280; 11 Fed. Cas. 528.

The court of bankruptcy had made an order authorizing the assignee to surrender to the pledgee certain policies of life insurance belonging to the estate, upon the release by him of the indebtedness thus secured. It appearing later that the order was made upon a misrepresentation of the facts, the court vacated the order. In re Hoole, 3 Fed. Cas. 496.

A creditor was about to file a petition for the enforcement of his lien on the bankrupt's property within the statutory time, but was persuaded to wait by the assignee's attorney. The court held that it would be in-

equitable to allow the assignee to take advantage of the delay. In re Bear et al., 8 Fed. Rep. 428.

The bankrupt owned real estate upon which there was a vendor's lien, and there were also claimed to be other incumbrances. Held, that the rights of the parties could not be adjudicated in the proceedings in bankruptcy, and that there must be a plenary suit in equity. Ex parte Drewry, 2 Hughes, 435; 7 Fed. Cas. 1074.

A draft drawn by a bankrupt, not payable out of any particular fund, is only a security, and not an assignment of moneys in the hands of the drawee, before acceptance. Dickey et al. v. Harman et al., 1 Cranch C. C. 201; 7 Fed. Cas. 674 (1804).

Held, that the assignee had only such rights as the bankrupt had when the proceedings were commenced over collaterals deposited with a bank, more than two months prior to the bankruptcy, as security for indebtedness which then existed, or might thereafter accrue. Bacon v. International Bank, 131 U. S.

A pledgee having possession of the property of the bankrupt under a valid pledge is entitled to the possession of the same until he is paid. Yeatman v. Savings Institution, 95 U. S. 764.

Where there are valid and subsisting liens on the premises of the bankrupt, and the priority of the same has been fixed, neither the mortgagor nor his assignee in bankruptcy can object to the determination. Jerome v. McCarter, 24 U. S. 734.

A creditor having a valid lien on property of the bankrupt received a transfer of an equity of redemption in other property under circumstances amounting to a violation of the Bankrupt Act. Held, that this did not invalidate the lien. Avery v. Hackley, 20 Wall. 407.

The bankrupt had drawn orders against the proceeds of a note, which he left with his attorney for collection. It was held that the holders of these orders were entitled to payment out of the proceeds as against the assignee in bankruptcy. In re Smith, 16 N. B. R. 399; 22 Fed. Cas. 409.

The bankrupts, in addition to other business, carried on a broker's office, for which they kept a separate bank account. Held, that a party for whom they sold bonds was entitled to the proceeds in full if their funds in bank on their brokerage account were more then sufficient to pay all claims against that part of their business. Voight v. Lewis, 14 N. B. R. 543; 28 Fed. Cas. 1257.

The bankrupt having assigned a bond for a deed, before the commencement of proceedings, to indemnify sureties, it was held that the lien of the latter must be respected, and that the assignee in bankruptcy took the bond subject to their equities. In re Reynolds, 16 N. B. R. 158; 20 Fed. Cas. 615.

It was held that the Act of 1841 did not relate back to avoid an assignment for the benefit of creditors made before the Act went into operation. In re Holmes, 1 N. Y. Leg. Obs. 211; 12 Fed. Cas. 401.

A husband who was entirely free from debt conveyed lands to his wife, reserving a power of revocation. Three years thereafter he became bank-

rupt. It was decided that the settlement would be upheld against the assignee in bankruptcy. Jones v. Clifton, 2 Flip. 191; 13 Fed. Cas. 942.

Only liens that exist at the time of the commencement of proceedings will be recognized in bankruptcy. In re Dey, 3 Ben. 450; 7 Fed. Cas. 625.

An equitable lien, though it is a matter of agreement only, is a charge *in rem* which will be enforced upon personal as well as real estate, as against the debtor's assignee in bankruptcy. Fletcher et al. v. Morey, 2 Story, 555; 9 Fed. Cas. 266 (1843).

It was held that the proviso to the second section of the Act of 1841 embraced all liens, equitable as well as legal, which are valid under the law of the place. Ibid.

In Massachusetts, the United States district court held that a pledge of personal property was good against the assignee in bankruptcy notwithstanding the possession remained in the pledgor as agent for the pledgee. Ex parte Fitz, 2 Low. 519; 9 Fed. Cas. 185.

F. A. & Co., of London, had given to the bankrupts, of Boston, a letter of credit, and the bankrupts had thereupon agreed that all merchandise purchased by means of such letter should be pledged to F. A. & Co. as collateral security. Under the Act of 1841 this was held to be a valid lien against the goods, and the proceeds thereof, in the hands of the assignee in bankruptcy. Fletcher et al. v. Morey, 2 Story, 555; 9 Fed. Cas. 266 (1843).

An incumbrance of specific property, made in pursuance of an agreement at the time that the consideration was given, where the transaction is free from fraud, is valid, the advance being regarded as a present consideration for the conveyance. Gattmen v. Honea, 12 N. B. R. 493; 10 Fed. Cas. 89.

The cashier of a bank took a bill of sale to secure overdrafts. The bill of sale was not recorded. Later, and within two months before the filing of a petition in bankruptcy, the bank took another bill of sale for the same indebtedness, and recorded it, and took possession of the goods. This, though in itself fraudulent and void as a preference under the Act of 1867, was held to relate back to the first bill of sale, and thus became a valid security. In re Doran, 5 Cent. L. J. 260; 7 Fed. Cas. 915.

"Liens," as meant by congress in the Bankrupt Act, includes all liens protected by the laws of each state. In re Winn, 1 N. B. R. 499; 30 Fed. Cas. 303 (1867).

Only liens that are valid under the laws of the state where the property is situated will be recognized in bankruptcy. In re Cozart, 3 N. B. R. 508; 6 Fed. Cas. 696.

The court of bankruptcy will not aid creditors in enforcing liens after the discharge of the bankrupt. In re Dean, 3 N. B. R. 768; 7 Fed. Cas. 292.

The court ordered the sale of the bankrupt's real estate discharged of liens, which were to be paid out of the proceeds. One of the lien claims expired by limitation after the order and before the sale. Held, that the claimant was nevertheless entitled to share in the proceeds. Davis v. Stitzer, 19 N. B. R. 61; 7 Fed. Cas. 177.

A lien upon specific property of the bankrupt may be preserved by proving the claim in bankruptcy and having the lien allowed. Buchanan v. Dunn, 2 Hask. 215; 4 Fed. Cas. 573.

One with whom a sum of money was deposited to indemnify him as surety on an appeal bond cannot be required to surrender it until his liability is determined. In re Buse, 3 N. B. R. 215; 4 Fed. Cas. 879.

Where the assignee of a permit to cut timber agrees to reassign to another, and thereupon the latter advances funds to drive the logs to market, the second assignee is subrogated to the rights of the former, and also has a lien on the logs for advances so made. In re Gregg, 1 Hask. 173; 10 Fed. Cas. 1186.

The assignment of a permit to cut timber, and a conveyance of the timber, to secure advances made before the petition was filed, create a valid lien upon the timber; but the contrary is true as to advances made after the petition is filed, notwithstanding the assignee was ignorant of the proceedings. Ibid.

A party to whom stock is pledged to secure call loans can sell it without leave of the court of bankruptcy, but must pay the surplus over his debt into court. In re Grinnel, 9 N. B. R. 137; 11 Fed. Cas. 50.

A creditor having a valid lien upon real estate of the bankrupt should be paid in full from the proceeds, deducting only the cost of proving the lien, and nothing for the general expenses of the proceedings in bankruptcy. In re Hambright, 2 N. B. R. 498; 11 Fed. Cas. 314.

An agreement between a pledgor and pledgee, that the latter will hold the goods for a certain time and then sell them is valid, notwithstanding the pledgor has in the meantime become bankrupt. Ex parte Caylus et al., 1 Low. 550; 5 Fed. Cas. 325.

Before the filing of a petition in bankruptcy, the bankrupt had rendered services to a bailee of his own goods, for which the latter had paid him. Held, that the bailee was entitled to the amount so paid as against the assignee in bankruptcy. Catlin v. Foster, 1 Saw. 37; 5 Fed. Cas. 303.

When property subject to a lien is sold under authority of a court in bankruptcy, and the proceeds amount to no more than the incumbrance, they must be turned over to the lien creditors with no other deduction than the actual costs of the sale. In re Blue Ridge R. Co., 2 Hughes, 225; 3 Fed. Cas. 750.

The bankrupt had made certain notes and secured them by a conditional bill of sale of personal property. The bill of sale was recorded in the town of B., where the bankrupt represented that he resided. He paid all of the notes except one. Soon after he went into bankruptcy. The assignee refused to pay the last note on the ground that the bankrupt did not reside in the town where the bill of sale was recorded. It was held that the bankrupt could not take advantage of his own wrong, and that the note must be paid. Allen v. Whittemore, 8 Ben. 485; 1 Fed. Cas. 521.

A merchant solvent at the time, though owing some debts, may make a settlement on an illegitimate child, and it was held to be good against subsequent creditors. Anon., 1 Wall. Jr. 127; 1 Fed. Cas. 1027 (1843).

A bill of sale reserved a right in the vendor to retake possession of the goods upon the failure to pay installments on the purchase price. The vendor acted under this authority, and a few days latter a petition in bankruptcy was filed against the vendee. His assignee brought suit for the value of the goods. It was held that the transaction was valid as against the assignee. Field v. Baker et al., 12 Blatchf. 438; 9 Fed. Cas. 9.

A lien which is superior to others will be paid out of the fund upon which it is the only lien, as far as possible. In re Bowler, 2 Hughes, 319; 3 Fed. Cas. 1072.

Under the laws of the state W. had a lien upon the cattle of the bankrupt for pasturing the same. After the commencement of proceedings in bankruptcy he turned them over to the assignee. Later, he prayed for the payment of his claim from the proceeds of the sale of the cattle. It was held that he waived his lien by parting with the possession; but that the assignee should pay for the keeping of the cattle from the commencement of proceedings in bankruptcy to the time that he surrendered them. In re Mitchell, 8 N. B. R. 47; 17 Fed. Cas. 492.

A *cestui que trust* cannot follow the trust funds in the hands of the assignee in bankruptcy unless they remain in specie; when they have been made away with he must come in with the general creditors. In re Janeway, 4 N. B. R. 100; 13 Fed. Cas. 348.

The court held that the assignee should respect the equitable lien of a vendor as to property that the bankrupt sought to have set apart as a homestead. In re Perdue, 2 N. B. R. 183; 19 Fed. Cas. 220.

The court of bankruptcy will follow the principles of equity jurisprudence in passing upon rights under a pledge of collaterals, unless it conflicted with some provision of the Bankrupt Act. In re Peebles, 2 Hughes, 394; 19 Fed. Cas. 94.

The court will sustain the assignment of a lease by the lessor to secure a debt as against his assignee in bankruptcy. Meador et al. v. Everett, 3 Dill. 214; 16 Fed. Cas. 1300.

Where a debtor who is possessed of property of greater value than the amount of his debt conveys his property to another on an agreement that the grantee shall pay his debts and maintain him during the balance of his life, such a conveyance is not of itself fraudulent. In re Cornwall, 9 Blatchf. 114; 6 Fed. Cas. 586.

A loan made in good faith to an insolvent person, and secured at the time, is not a violation of the Bankrupt Act. Darby v. Boatman's Sav. Inst., 1 Dill. 141; 6 Fed. Cas. 1179.

A person purchased a debtor's stock of merchandise in good faith, paying part of the consideration and assuming certain debts of the vendor for the balance. He was held to be entitled to protection against the attaching creditors of the fraudulent vendor to the full amount of the consideration. Sonstiby v. Keeley, 11 Fed. Rep. 578.

Money advanced for fees in bankruptcy is a first lien on the estate, without respect to a mortgage given to secure it. Whiston v. Smith et al., 2 Low. 101; 29 Fed. Cas. 944.

Under the clause of the Constitution relating to bankruptcy, congress has power to destroy any lien upon the property of the bankrupt, whether created by statute, judgment or contract. In re Jordan, 8 N. B. R. 180; 13 Fde. Cas. 1079, and 10 N. B. R. 427; 13 Fed. Cas. 1082.

It was held that a bankrupt could not after his discharge purchase prior liens on his estate, and enforce the name to the exclusion of subsequent lien-holders. In re Burton, 29 Fed. Rep. 637.

Judge Fox of the district court of Maine used this language: "When lands subject to an incumbrance are sold to different parties at different times, those last sold are primarily liable to the payment of the incumbrance, which, although a lien on the whole, is chargeable on each parcel in the inverse order of its alienation. * * * The case, therefore, is simply this: the assignees for the benefit of all parties interested in the estate, while a bill in equity was pending for the determination of their rights and for a sale of the property has, with the approval of the court in equity, removed an incumbrance from the property by applying the general funds in their hands to this purpose. The respondents P. & Co. would have paid the same amount from their own funds and discharged this incumbrance if the assignees had failed to do it; and they are the only parties who have profited by the discharge of the incumbrance. The assignees now pray for a return of the amount so paid; and I hold that justice and equity require that the amount should be refunded." In re Longfellow et al., 2 Hask. 221; 15 Fed. Cas. 834.

"In Contemplation of Bankruptcy."

The words "in contemplation of bankruptcy" under the Act of 1841 mean only insolvency and inability further to carry on business. Hutchins v. Taylor, 5 Law Rep. 287; 12 Fed. Cas. 1079 (1842).

The words "contemplation of bankruptcy" means contemplation of insolvency, and not proceedings under the Act. Averett v. Stone et al., 3 Story, 446; 8 Fed. Cas. 898 (1844).

A transaction may be "in contemplation of bankruptcy" notwithstanding the creditor did not know of the debtor's insolvency, and did not act in collusion with him to secure a preference. Packham v. Burrows, 3 Story, 544; 19 Fed. Cas. 85 (1844).

Contemplation of bankruptcy means more than the inability to pay debts promptly. It means a thorough breaking up of the debtor's business. McLean v. LaFayette Bank et al., 3 McLean, 587; 16 Fed. Cas. 264 (1846).

Justice Nelson held that the words "in contemplation of bankruptcy" mean in contemplation of committing what is made by the act an act of bankruptcy. In re Craft, 6 Blatchf. 177; 6 Fed. Cas. 701; following Buckingham v. McLean, 54 U. S. 150.

Referring to the words "in contemplation of bankruptcy" Judge Conkling said: "I shall venture at present to consider this equivalent, or nearly so, to the phrase, 'in expectation of stopping payment.'" Stewart et al. v. Loomis, 23 Fed. Cas. 66.

A conveyance made by an insolvent debtor with the intention of breaking up business at once is "in contemplation of bankruptcy" within the meaning of the Act of 1841, and the intention to give a preference will be presumed. Jones v. Sleeper, 2 N. B. R. 131; 13 Fed. Cas. 1030 (1843).

The rule in England was that the phrase "in contemplation of bankruptcy" implied that the debtor must have the Bankrupt Act in mind; but in this country the phrase has been construed to mean in contemplation of becoming insolvent and being compelled to wind up business. Ashby v. Steere, 2 Woodb. & M. 342; 2 Fed. Cas. 15 (1846); Atkinson v. Farmers' Bank, Crabbe, 529; 2 Fed. Cas. 100.

The words "in contemplation of bankruptcy," under the Act of 1841, did not necessarily mean in contemplation of being declared a bankrupt, but may mean in contemplation of actually stopping business because of insolvency. Arnold v. Maynard, 2 Story, 341; 1 Fed. Cas. 1181 (1842).

Previous to the passage of the Act of 1841, the bankrupt had declared that the firm of which he was a member would sell their goods to pay some debts; then make an assignment and await the passage of the bankrupt law. Later, he gave certain preferences to creditors. It was held that they were made in view of the probable passage of the Bankrupt Act, and were, therefore, "in contemplation of bankruptcy." Ex parte Quackenboss, 1 N. Y. Leg. Obs. 146; Betts Scr. Bk. 105; 20 Fed. Cas. 101, 104 (1842).

Remedies Against Fraudulent Transfers.

The determination of a question between an assignee and an execution creditor should be speedy, and may be informal, but it should not be conducted in violation of the rules of evidence. In re Beck, 1 N. B. R. 588; 3 Fed. Cas. 316.

In determining whether a sale was or was not in the ordinary course of business, regard must be had to the nature of the articles sold. Judson v. Keltie et al., 5 Ben. 348; 14 Fed. Cas. 14.

A general assignment for the benefit of creditors without intent to defraud is valid except as the same may be attacked in proceedings authorized by the Bankrupt Act. Boese v. King, 108 U. S. 379.

To avoid a judgment in violation of the Bankrupt Act of 1867, it was necessary that a petition should be filed against the judgment debtor within six months from the entry of the judgment. In re Fuller, 1 Saw. 243; 9 Fed. Cas. 978.

On the suit of the assignee, a court of equity will set aside a transfer of its assets by an insolvent corporation to a firm of which one of its directors is a member, made more than six months before the commencement of proceedings in bankruptcy as security for a debt to such corporation. So held under the Act of 1867. Bradley et al. v. Farwell et al., Holmes, 433; 3 Fed. Cas. 1146.

A man who was insolvent at the time conveyed certain land to his son-in-law. Later, he filed a petition in bankruptcy under the Act of

1800, and entered the same land on his schedules. Fifty years afterward the descendants of the grantee brought suit to recover possession of the land. The court charged the jury that the facts were strongly tainted with fraud, and a verdict was rendered for the defendants. Buckley et al. v. Buffington, 5 McLean, 457; 4 Fed. Cas. 615 (1853).

Within four months before the commencement of proceedings, but in pursuance of an agreement made long before, the bankrupt had transferred certain property to a creditor. There being no evidence that a preference or fraud was intended, it was held that the assignee in bankruptcy could not recover in an action of trover. Wadsworth v. Tyler, 2 N. B. R. 316; 28 Fed. Cas. 1320.

Some years before the commencement of proceedings in bankruptcy, the bankrupt had conveyed certain property for the benefit of his wife. The court held that the conveyance was voluntary, and, therefore, void as against creditors, and that subsequent as well as previous creditors could share *pro rata* in the proceeds. Smith v. Kehr et al., 2 Dill. 50; 22 Fed. Cas. 584.

Creditors had taken the real estate of the bankrupts under process that was valid against the assignee. The tax collector proved the taxes due on the property so taken against the estate of the bankrupt. The court held that it would be inequitable to allow the creditors to escape the burden of the taxes on the property they acquired under their levy, and suspended the proof to ascertain whether the taxes had been deducted and allowed from the valuation made by the appraisers at the time of the levy. Foster v. Inglee, 13 N. B. R. 239; 9 Fed. Cas. 554.

An adjudication of bankruptcy in involuntary proceedings is not conclusive against an execution creditor as to the allegations in the petition for adjudication. In re Dunkle et al., 7 N. B. R. 72; 8 Fed. Cas. 56.

The mortgagee of a stock of goods placed the mortgagor in possession as his agent. The mortgage having been set aside as a fraud upon creditors, it was held that the mortgagee was chargeable with the whole amount of goods sold by the mortgagor while the latter was in possession as agent, whether the proceeds were applied on the former's debt or not. Smith v. Ely et al., 10 N. B. R. 553; 22 Fed. Cas. 538.

Any lien or incumbrance which would be void for fraud as against creditors, if no petition in bankruptcy had been filed or assignee appointed, will be equally void as against the general creditors represented by the assignee. In re Wynne, Chase, 227; 4 N. B. R. 23; 30 Fed. Cas. 752 (1868).

An action by an assignee in bankruptcy to recover the value of goods alleged to have been transferred in violation of the Act is substantially an action of trover. The assignee may recover damages for the detention of the property, including the proceeds made out of it, or injuries received by it in the possession of the transferee. The complaint must allege an actual conversion, or a demand and refusal. Shuman v. Fleckenstein, 4 Saw. 174; 22 Fed. Cas. 54.

A bank that had notes of a depositor, one of which was past-due, was requested to make a further loan, and demanded as a condition that the

creditor should give demand notes in exchange for those that had not matured. This having been done, the bank entered judgment on the new notes, and seized and sold the property of the debtor. The debtor having been adjudged a bankrupt, the bank was ordered to pay to the assignee the amount realized at the sale of the debtor's property. Loudon v. First Nat. Bank, 2 Hughes, 420; 15 Fed. Cas. 935.

The rule that a creditor is liable to the assignee for the proceeds of a sale on attachment when the levy was made within four months before the commencement of the proceedings is not affected by the fact that the debtor did not appear and defend the attachment suit. Bracken v. Johnston, 4 Dill. 518; 3 Fed. Cas. 1120.

A creditor having reasonable cause to believe his debtor to be insolvent, who levies upon his entire stock, was held chargeable as an inference from the circumstances with an intent to defeat the Bankrupt Act. An order was granted upon the sheriff to pay the proceeds of such a sale to the assignee in bankruptcy. Linkmen v. Wilcox, 1 Dill. 161; 15 Fed. Cas. 561.

Three days before the commencement of proceedings in involuntary bankruptcy, a creditor had levied upon goods of the bankrupt under process issued by a state court. Before adjudication, and before the sheriff had actual notice of the proceedings in bankruptcy, he sold the goods as perishable, in pursuance of an order from the state court. In a suit by the assignee, it was held that the sheriff was guilty of conversion; that the order from the state court was no protection, and that the measure of damages was the true market value of the property on the day of sale, and not the amount realized. Long v. Connor, 17 N. B. R. 540; 15 Fed. Cas. 823.

Where a sheriff has sold goods on execution or attachment, after the commencement of proceedings in bankruptcy, the fact that the assignee has obtained judgment against the attaching creditor for the conversion will not bar a suit against the sheriff for the same conversion, if the former judgment remains unsatisfied. Ibid.

The fact that an execution issued against a merchant would stop his business, charges the execution creditor with reason to believe the debtor insolvent. Hood et al. v. Karper, 5 N. B. R. 358; 12 Fed. Cas. 456.

An action in trover will not lie against a sheriff who sold property on execution, and in good faith, and without actual notice or knowledge of the proceedings in bankruptcy, paid the proceeds to the judgment creditor. So held in a case where the property sold was attached before the proceedings in bankruptcy and sold afterward. It was also held that the creditor could be compelled to pay the proceeds to the assignee. Bradley v. Frost et al., 3 Dill. 457; 3 Fed. Cas. 1151.

A sheriff had attached property of the bankrupt before the commencement of the proceedings, and thereafter, and after the election of the assignee, sold the property and paid the proceeds to the execution creditor. He had no actual notice of the bankruptcy. It was held that he was liable to the assignee for the proceeds of the property sold. Miller v. O'Brien, 9 Blatchf. 270; 17 Fed. Cas. 345.

The transfer of property as security for an old debt, without the surrender of evidence of such debt, does not constitute a *bona fide* purchaser for a valuable consideration. Morse v. Godfrey et al., 3 Story, 364; 17 Fed. Cas. 854 (1844).

A creditor of a bankrupt, a few days before the proceedings were commenced, brought an action against him in a state court, and having obtained a judgment, levied upon and sold the debtor's property. After the appointment of the assignee, the judgment creditor was required to pay in the amount received from the sale, and the proof of his debt against the estate of the bankrupt was expunged. In re Davidson, 4 Ben. 10; 7 Fed. Cas. 27.

To maintain an action in trover, the plaintiff must be one who was able to bring the suit at the time of the conversion; hence an assignee in bankruptcy could not sustain such an action against judgment creditors to recover the value of the bankrupt's property sold on execution prior to the commencement of the proceedings. Gaylor v. American et al., 5 Biss. 86; 10 Fed. Cas. 124.

It was held that the assignee in bankruptcy could recover from the trustee under an attachment by trustee process within four months before the filing of the petition, any property that has passed to such trustee. Robinson v. Tuttle et al., 2 Hask. 76; 20 Fed. Cas. 1049.

Where an execution creditor sells property of the bankrupt without leave of the court of bankruptcy, the sale may be set aside and the actual value of the property may be recovered from him, without respect to the amount realized upon the sale. Smith v. Kehr et al., 2 Dill. 50; 22 Fed. Cas. 584.

Judge Woodruff sustained a suit by an assignee in bankruptcy to set aside a judgment obtained by a creditor in a state court, the latter having reasonable cause to believe that his debtor was insolvent at the time. Smith v. Buchanan et al., 8 Blatchf. 153; 22 Fed. Cas. 458.

The court of bankruptcy set aside a sale of real estate which was levied upon after the commencement of proceedings, and sold for about one-tenth of its actual value. Thames v. Miller, 2 Woods, 564; 23 Fed. Cas. 887.

Creditors whose accounts were seven or eight months past-due, and who had to bring a suit to recover them, are chargeable with reasonable cause to believe their debtors insolvent, and the assignee in bankruptcy could recover the money so collected with interest and costs. Stranahan v. Gregory et al., 4 N. B. R. 427; 23 Fed. Cas. 216.

When property has been sold under executions on judgments suffered and procured by the debtor in order to give preference to certain creditors, upon the debtors being adjudged bankrupt and the preferences adjudged fraudulent, the measure of recovery by the assignee in bankruptcy against the preferred creditors was held to be the amount realized at the sheriff's sale, no deductions being allowed for fees and costs of sale. Sedgwick v. Milward, 5 N. B. R. 347; 21 Fed. Cas. 985 (1871).

A conveyance by a debtor partly to secure an existing debt and partly

for a cash consideration was held to be wholly void and invalid as a fraud against the bankrupt law; also held, that the assignee was entitled to recover the full value of the property thus fraudulently conveyed. Scammon v. Hobson, 1 Hask. 406; 21 Fed. Cas. 638 (1872).

An assignee in bankruptcy has the right of an attaching or execution creditor to attack a chattel mortgage void by the law of the state for the failure to record it. In re Werner, 5 Dill. 119; 29 Fed. Cas. 704.

The court sustained the validity of a sale by a bankrupt merchant of his stock in trade for its full value, no fraudulent intent appearing. In re Strenz, 8 Fed. Rep. 311.

A decree by a district court on a bill of an assignee in bankruptcy against a voluntary assignee, for the delivery by the latter of the assets of the bankrupt, is conclusive in collateral proceedings. Neill v. Jackson et al., 8 Fed. Rep. 144.

Judge McCreary held that an assignee in bankruptcy represents the rights of creditors, and may attack a mortgage made by the bankrupt in fraud of his creditors, notwithstanding it is good as between the parties. Crooks v. Stuart et al., 7 Fed. Rep. 800.

A voluntary conveyance to the wife of a debtor, followed by the fraudulent disposition of his remaining assets, will be presumed to be fraudulent and void as to subsequent as well as former creditors. Burdick v. Gill et al., 7 Fed. Rep. 668.

The court dismissed a bill in equity by assignees in bankruptcy to recover the value of personal property transferred to the defendant by the bankrupt on the ground that the assignees had a plain, adequate and complete remedy at law. Gray v. Beck et al., 6 Fed. Rep. 595.

Where an attachment had been levied upon the goods of the bankrupt less than four months before the commencement of proceedings, the title of the assignee, nevertheless, relates back to the date of filing the petition. When the goods were sold prior to the commencement of proceedings, the assignee has a right of action for the proceeds against the sheriff, or against the creditor if the proceeds have been paid to him; but when the goods are sold after the filing of the petition, the purchaser receives no title, and they are the property of the assignee. Conner v. Long, 104 U. S. 228.

It is not necessary that the assignee have actual possession in order to enable him to have enjoined a lien under a fraudulent judgment from being placed on property fraudulently conveyed by the bankrupt. The parties to the judgment being parties to the bankruptcy proceedings, the objection that the property cannot be reached will not be sustained; for if the property cannot be reached the assignee's right ceases and the alleged fraudulent judgment can in that event be enforced. Lehman v. LaForge, 42 Fed. Rep. 493.

A sheriff who had sold the goods of a bankrupt on a writ of attachment without notice of the commencement of proceedings in bankruptcy in another state, and paid the proceeds to the creditor, was held not to be liable to the assignee of the attachment debtor for the wrongful conversion of the goods. Conner v. Long, 104 U. S. 228.

The measure of damages in a suit by an assignee in bankruptcy to recover the proceeds of a bankrupt's property sold under a judgment is the actual value of the property and not necessarily the same which it brought on the sale. Clarion Bank v. Jones, 21 Wall. 325.

Where a party had obtained property of the bankrupt by virtue of a decree of a state court in a suit instituted after notice of an act of bankruptcy, it was held, under the Act of 1841, that he must account to the assignee therefor. Shawhan v. Wherritt, 7 How. 627.

Where property is held under process of a state court, the assignee in bankruptcy must recover it by a plenary suit, and the summary proceeding is not competent in such a case. Smith v. Mason, 14 Wall. 419; Marshal v. Knox, 16 id. 551.

The measure of damages in an action to recover property sold under a fraudulent judgment is the actual value of the property sold. Clarion Bank v. Jones, 21 Wall. 325.

The trustee, under a deed of assignment for the benefit of creditors made and partly executed before the commencement of proceedings in bankruptcy, is not liable for property turned over, or payments made by him in good faith to lawful creditors in accordance with the terms of the assignment, but is liable for all other property coming into his hands. Jones v. Kinney et al., 5 Ben. 259; 13 Fed. Cas. 985.

A sale of his entire property by a debtor on the eve of bankruptcy was attended with the elements of fraud so far as he was concerned, but there was no evidence of bad faith on the part of the vendee. The assignee moved that the vendee be required to turn over the property. The court refused to decide the question on a motion, and relegated the assignee to the procedure prescribed in general order 13 under the Act of 1867. In re Hunt, 2 N. B. R. 539; 12 Fed. Cas. 898.

An assignment by an insolvent debtor to a trustee with power to sell within two years and distribute the proceeds among creditors who would accept 60 per cent. of their claims, and reserving the property remaining after such settlement to the debtor, is void under the Bankruptcy Act. In re Beadle, 5 Saw. 351; 2 Fed. Cas. 1106.

The sale of property by a bankrupt out of the usual and ordinary course of business is presumptively fraudulent, but this presumption may be overcome by proof to the contrary. Babbitt v. Walbrun et al., 1 Dill. 191; 2 Fed. Cas. 283, 285; affirmed by the supreme court in 16 Wall. 577.

When it is sought to establish fraud against a second vendee, it must at least be shown that he knew, or had cause to know, the facts which made the first sale fraudulent. Ibid.

Prior to the proceedings, the bankrupt, after repeated failures to pay, gave H. a mortgage. H. knew that the mortgagor owed other debts which were unsecured. On the suit of the assignee in bankruptcy, the mortgage was set aside. In re Armstrong, 9 Ben. 212; 1 Fed. Cas. 1134.

An assignee without actual fraud, but in violation of the Bankrupt Act, is not void, but only voidable at the suit of the assignee and not otherwise. Barnes v. Rettew, 28 Leg. Int. 124; 2 Fed. Cas. 868.

When one member of a firm assigned all his individual property for the benefit of his individual creditors, the balance to be distributed among partnership creditors, the court set the assignment aside at the suit of the assignee under section 35 of the Act of 1867. Barnewall et al. v. Jones et al., 14 N. B. R. 278; 2 Fed. Cas. 882.

An assignee can recover property fraudulently disposed of by the bankrupt by summary proceedings in the bankrupt court. Justice Swayne expressed the opinion that they were to be preferred to an action in law or a suit in equity. In re Bill et al., 2 N. B. R. 241; 3 Fed. Cas. 376.

A creditor of an insolvent debtor already had a lien upon certain property for an amount greater than its value, and thereafter the debtor conveyed the property to him. This was held not to be void under section 35, Act of 1867. Catlin v. Hoffman, 2 Saw. 286; 5 Fed. Cas. 307.

An assignee, as the representative of the creditors, can maintain an action which the bankrupt himself would not be allowed to prosecute on the ground of public policy. Brock v. Terrell, 2 N. B. R. 643; 4 Fed. Cas. 198.

It was held that section 35 of the Act of 1867 did not apply to an action brought by an assignee in bankruptcy to recover property fraudulently conveyed by the bankrupt previous to the filing of the petition. Bradshaw v. Klein, 2 Biss. 20; 3 Fed. Cas. 1176.

An assignee who had failed to enjoin proceedings for the foreclosure of a mortgage until the time for sale, and subsequently applied for leave to sell the property, was held chargeable with the costs on a dismissal of his petition. In re Brinkman, 6 N. B. R. 541; 4 Fed. Cas. 144.

An assignee under the law of the state sold the assigned property under the orders of the state court, and paid the proceeds to creditors who proved up under the assignment. Judge Dillon decided that the assignee in bankruptcy could not recover the value of the property conveyed to the assignee under the state laws by the deed of assignment, in an action of trover. Cragin v. Thompson, 2 Dill. 513; 6 Fed. Cas. 708.

A debtor having made a fraudulent conveyance of property, it was levied upon and sold under a judgment against him. Held, that the right of action by the assignee in bankruptcy against the purchaser did not accrue until the latter had acquired his title. Davis v. Anderson et al., 6 N. B. R. 145; 7 Fed. Cas. 103.

The court will sustain a suit by an assignee in bankruptcy against a judgment creditor of the bankrupt for the proceeds of property sold under a judgment of the state court, such judgment having been obtained in fraud of a valid execution subsequent to that of the defendant. In such action the recovery will be limited to the amount actually received by the defendant when part of the proceeds of the execution sale went to another creditor. Anshutz v. Hoerr, 1 Fed. Rep. 592.

Proceedings to enjoin sheriff from selling and disposing of assets levied on under executions must be by bill in equity. Wilson v. Childs, 8 N. B. R. 527; 30 Fed. Cas. 116 (1875).

A person who proposes to make a purchase out of the usual course of business of the seller must in all cases make a reasonable inquiry as to the right of the seller to make the proposed sale,—a sale under such circumstances being *prima facie* fraudulent. Schulenburg v. Kabureck, 2 Dill. 132; 21 Fed. Cas. 751 (1873).

A mistake in a mortgage to the detriment of the mortgagee may be corrected in the course of litigation, in the district court, with the assignee of the bankrupt mortgagor, inasmuch as the assignee only succeeds to the rights of the bankrupt, and takes his interests subject to all equitable claims of others. Schulze v. Bolting, 8 Biss. 174; 17 N. B. R. 167; 21 Fed. Cas. 754 (1878).

Judgments against the bankrupt were obtained when the creditor had reasonable cause to believe him insolvent. They were set aside upon the suit of the assignee in bankruptcy, and the creditor having contested the suit, it was held that he must pay the costs. Warren v. Del., L. & W. R. Co., 7 N. B. R. 451; 29 Fed. Cas. 271.

In the case cited, the court, upon giving a judgment to the assignee in bankruptcy for the proceeds of a preference obtained by judgment and execution, allowed the sheriff the costs of the suit, and charged them against the execution creditor. Warren et al. v. Tenth Nat. Bank et al., 10 Blatchf. 493; 29 Fed. Cas. 287.

Where a transfer of property is made which is held to be void under the provisions of the Act as against the assignee in bankruptcy, the transferee is properly to be regarded as trustee for the plaintiff, and to be held to account as such, especially where it appears that some, if not all of the property, has passed away from the transferee. Such matters, being matters of trust, are of equitable cognizance. Schrenkeisen v. Miller, 9 Ben. 55; 21 Fed. Cas. 733 (1877).

Where an assignee in bankruptcy brings a suit in equity to set aside a sale as fraudulent, he must allege and prove that the defendant knew that the sale was in fraud of the provisions of the law. Crump v. Chapman, 1 Hughes, 183; 6 Fed. Cas. 924.

A railroad company gave a mortgage to a corporation, of which the president and the vice-president of the railroad company were secret members. The railroad company having been adjudged bankrupt, the mortgage was set aside as fraudulent; but the corporation was allowed to prove its advance made at the time of the execution of the mortgage as an unsecured debt. Kappner v. St. Louis & St. Jos. R. R. Ass'n, 3 Dill. 228; 14 Fed. Cas. 132.

A debtor in embarrassed circumstances conveyed his property, with trifling exceptions, to trustees for the use of his wife, the alleged consideration being an indebtedness to her for property belonging to her that he had appropriated. Under the terms of the deed, the wife could not dispose of the property, and the grantor reserved the right to sell or convey any part of it. The conveyance was set aside at the suit of the assignee in bankruptcy, the court holding that the property was subject to the debts of the bankrupt as they existed at the time the petition was

filed, except as to his homestead right. Fisher v. Henderson et al., 8 N. B. R. 175; 9 Fed. Cas. 132.

In compliance with the laws of Mississippi, an insurance company had deposited a sum of money with the treasurer of that state as a protection to policyholders. Later, upon withdrawing from business in that state, it assigned the balance in the hands of the treasurer to another company which succeeded to its business. Less than four months afterward, the company was declared bankrupt, and foreign creditors sought to attach the fund. Held, that the assignee in bankruptcy was the only party entitled under the Bankrupt Act to question the validity of the assignment. Firemen's Ins. Co. v. Hemingway et al., 9 Fed. Cas. 75.

A creditor who has commenced suit on the commercial paper of a trader, and within four months before the commencement of proceedings in bankruptcy takes security, and dismisses his suit, will be required to surrender his security to the assignee. Dunning v. Perkins, 2 Biss. 421; 8 Fed. Cas. 104.

It was held not to be a violation of the Bankrupt Act of 1867 for a corporation to sell two mortgages amounting to $10,000, which it had received for the stock and fixtures of a store, for $7,000, and a bill by the assignee in bankruptcy to recover back the mortgages from the purchaser was dismissed. Judson v. Keltie et al., 5 Ben. 348; 14 Fed. Cas. 14.

A sale of personal property with a lease of the same from the vendee to the vendor, and an agreement that the latter will buy it back at a fixed price, is a fraud upon creditors. In re Gerney, 7 Biss. 414; 11 Fed. Cas. 121.

A creditor levied an attachment on the property of an insolvent debtor, and on the same day released it upon receiving a bill of sale from the debtor. It was held that this was a violation of the Bankrupt Act of 1867; that the property so transferred could be recovered by the assignee in bankruptcy, and that the debtor's discharge should be denied. In re Gregg, 4 N. B. R. 456; 10 Fed. Cas. 1191.

After holding a chattel mortgage on property of the bankrupts for several years, the mortgagee took possession of it, and within four months after the filing of the petition in bankruptcy, sold it. The assignee brought suit against him, and recovered judgment for the value of the property, which was paid. He was then allowed to prove a moiety of his claim under the Act of 1867 (section 12, amendment of June 22, 1874). In re Kaufman et al., 19 N. B. R. 283; 14 Fed. Cas. 154.

Justice Hunt laid down the proposition that "all rights at law or in equity possessed by the bankrupt when the bankruptcy proceedings are commenced belong to the assignee." Hence, the assignee has a right to impeach a fraudulent conveyance wherever the creditors could do so, notwithstanding the bankrupt himself lost the right by participating in the fraud. In re Collins, 12 Blatchf. 548; 6 Fed. Cas. 114.

A transfer made out of the ordinary course of business is *prima facie* fraudulent, and the burden of proof rests upon the party who seeks to validate it. Collins et al. v. Bell et al., 3 N. B. R. 587; 6 Fed. Cas. 118.

A court in bankruptcy, at the suit of the assignee, will set aside a fraudulent conveyance made by the bankrupt before the Act was passed, when made without consideration, and to a person having knowledge of the fraudulent intent. Cady v. Whaling et al., 7 Biss. 430; 4 Fed. Cas. 990.

It was decided that the second clause of section 35 of the Act of 1867 does not apply to a preference in good faith made more than four months before the filing of the petition in bankruptcy. Coggeshall v. Potter et al., Holmes, 75; 6 Fed. Cas. 3.

When an assignment for the benefit of creditors is set aside by proceedings in bankruptcy, a decree should be made at the time of the adjudication requiring the trustee to surrender and convey the estate to the assignee in bankruptcy. Burkholder et al. v. Stump, 28 Leg. Int. 125; 4 Fed. Cas. 749.

A purchaser out of the usual and ordinary course of business will be required to show affirmatively that he took proper steps to ascertain the seller's condition; otherwise the sale will be avoided. Brooks et al. v. Davis, 1 Law & Eq. Rep. 196; 4 Fed. Cas. 272.

A loan at exorbitant interest, secured by a conveyance of the borrower's entire assets, will be treated as fraudulent. Ibid.

An assignment for the benefit of such creditors only as would accept the assignment in satisfaction of their claims is void as against the assignee in bankruptcy. In re Broome, 3 N. B. R. 113; 4 Fed. Cas. 317.

A trust deed of lands in another state, the debtor remaining in possession until the commencement of proceedings in bankruptcy, will not be set aside except upon allegation and proof that the conveyance was void under the laws of that state. In re Broome, 3 Ben. 488; 4 Fed. Cas. 317.

An assignee in bankruptcy can recover property fraudulently conveyed, notwithstanding he does not represent any creditor who was able to maintain such an action by reason of his having recovered a judgment against the bankrupt. In re Duncan et al., 8 Ben. 365; 8 Fed. Cas. 1.

An assignment that was valid as to the debtor, and as to the creditors, was voided by the assignee in bankruptcy only on the ground that it was in violation of the Bankrupt Act. It was held that he was entitled to the property as against a judgment creditor, who had levied an execution after the assignment, and before the filing of the petition in bankruptcy. In re Beisenthal et al., 14 Blatchf. 146; 3 Fed. Cas. 76.

The bankrupt need not be joined as defendant in a suit in equity to set aside a voluntary assignment for the benefit of creditors. Harding v. Crosby, 17 Blatchf. 348; 11 Fed. Cas. 490.

The district court, on the suit of the assignee, will set aside a voluntary assignment for the benefit of the bankrupt's creditors made within three months before the commencement of proceedings in bankruptcy, under section 5129, R. S., as amended by the Act of 1874. Ibid.

A gift by a debtor will be avoided in bankruptcy unless sufficient property is retained to pay all of the donor's debts. Knox et al. v. Greenleaf, Wall., Sr., 108; 14 Fed. Cas. 815.

A creditor, having knowledge of the insolvency of his debtors, purchased from them the stock and fixtures of a store, and gave his note for the balance over his claim. This was held to be void under section 35 of the Act of 1867. In re Kahley, 2 Biss. 383; 14 Fed. Cas. 71.

The bankrupts had made a fraudulent sale of their property to D., who, after taking possession, mortgaged it to M. After an adjudication in bankruptcy against the sellers, M. sold the mortgage to K. The assignee brought a suit to recover the value of the property. Held, that he was entitled to a decree against D. for the value of the property and against M. and K. for that amount less the amount advanced by M. on the mortgage. Brooks v. D'Orville et al., 7 Ben. 485; 4 Fed. Cas. 272.

Under section 35 of the Act of 1867, a sale of a stock of merchandise by a debtor not in the usual and ordinary course of business was *prima facie* evidence of fraud. In re Dean et al., 2 N. B. R. 89; 7 Fed. Cas. 291.

A trader who knew he was insolvent made a transfer of his property and books of account to a creditor who had a reason to believe such to be the fact. The assignees in bankruptcy were held to be entitled to recover the property transferred, and the value of any that had been sold, with interest from the time they demanded it. In the absence of good faith on the part of the grantee, the court refused to allow him the amount of the judgments which he paid in order to obtain the benefit of the conveyance, and the amount which he collected from the accounts and paid over to his principal. Cunningham et al. v. Morgan et al., 7 Blatchf. 480; 6 Fed. Cas. 454.

A debtor gave a note and trust deed to a trustee for his wife to secure money alleged to be due for the use of her separate property. The conveyance was held to be fraudulent and void as to creditors to whom debts were due at the time it was given. Gillespie v. McKnight et al., 3 N. B. R. 468; 10 Fed. Cas. 385.

The assignee had sold certain chattels upon which there was a mortgage, and the mortgagee released the assignee from all claim for the proceeds. Thereafter the assignee filed a bill to avoid the mortgage as a preference. The court held that the bill would not lie. Given v. Smith, 1 Hask. 296; 10 Fed. Cas. 451.

Both, under the Act of 1841 and that of 1867, a general assignment for the benefit of creditors, without preferences, is void as against an assignee in bankruptcy. This has always been the rule in England. Globe Ins. Co. v. Cable Ins. Co., 14 N. B. R. 311; 10 Fed. Cas. 48.

Proceedings having been commenced against one of two partners only, it was held that the court could not set aside a conveyance made by the firm with intent to prefer a joint creditor. Forsaith v. Merritt et al., 1 Low. 336; 9 Fed. Cas. 464.

About a month before adjudication, the bankrupt had assigned a note and mortgage to a creditor as security for an existing indebtedness and a small additional sum advanced at the time. The transaction was held void under section 35 of the Bankrupt Act of 1867. Granis v. Beardsley et al., 10 Fed. Cas. 964.

It is necessary that the vendee should have been a party to the fraud to enable an assignee in bankruptcy to recover from him goods sold on the eve of bankruptcy. Dickinson v. Adams, 4 Saw. 257; 7 Fed. Cas. 676.

Property alleged to belong to the bankrupt was seized by the marshal under a provisional warrant and turned over to the assignee. The marshal was thereupon sued in a state court by a party who claimed to own the property. The assignee and marshal then brought a suit in equity in the United States circuit court to set aside certain transfers under which the plaintiff in the suit against the marshal claimed such property, and for an injunction restraining the further prosecution of the suit in the state court. The injunction was granted, and the court affirmed the right of the marshal and assignee to bring the suit to set aside the transfers, notwithstanding the assignee was already in possession of the property. Kellogg v. Russel et al., 11 Blatchf. 519; 14 Fed. Cas. 255.

A fraudulent deed of trust was withheld from record to keep its execution from the knowledge of creditors. Proceedings in bankruptcy were commenced more than four months after its execution, but less than four months after it was recorded. The assignee brought a suit in equity to set aside the deed, and it was held not to be barred, as the statute did not begin to run until the deed was recorded. Harris v. Exchange Nat. Bank, 4 Dill. 133; 11 Fed. Cas. 624.

An assignment of all the debtor's property, without preferences, for the benefit of his creditors, was held to be a fraud under the bankrupt law of 1867. Platt v. Preston, 19 N. B. R. 241; 19 Fed. Cas. 847.

A sale by a retail dealer of his entire stock of goods was not in the "usual and ordinary course of business" within the meaning of the Act of 1867 (section 5130, R. S.), and the presumption of fraud was held not to be overcome by proof that the purchaser did not know of the intention of the seller to defraud his creditors. Main et al. v. Glen, 7 Biss. 86; 16 Fed. Cas. 503.

The I. M. Bank acted as agent of the C. S. Bank for the purpose of paying its checks which came through the clearing-house, and for that purpose had funds of the latter bank on open account to its credit. This was held to create only the relation of debtor and creditor, and the I. M. Bank having paid the balance in its hands to the C. S. Bank on the day of its failure, was held liable in an action brought by the assignee in bankruptcy to recover the same. Phelan v. Iron Mountain Bank, 4 Dill. 88; 19 Fed. Cas. 433.

An assignment for the benefit of creditors was held by Judge Cadwalader, of the district court of Pennsylvania, not to be void, but voidable by the assignee in bankruptcy by a bill in equity filed for the purpose. In re Pierce et al., 3 N. B. R. 258; 19 Fed. Cas. 630.

A bill in equity by an assignee in bankruptcy to set aside a chattel mortgage, a sale by virtue of the power contained therein, and an assignment for the benefit of creditors was held not to be multifarious. Platt v. Preston, 19 N. B. R. 241; 19 Fed. Cas. 847.

The assignee filed a petition against the vendee under a sale alleged

to have been fraudulent, and his sureties on a delivery bond, who were not otherwise parties to the proceedings in bankruptcy. The court ordered it to be dismissed as a petition, and to be filed as a bill in a plenary suit. In due course of proceedings in chancery, a decree was entered declaring the sale to have been fraudulent, and requiring the purchaser to pay the value, with interest from the date of the fraudulent sale, to the assignee in bankruptcy. Lisberger v. Garnett, 1 Hughes, 620; 15 Fed. Cas. 574.

A decree was made in favor of the assignee in a summary proceeding against a third person to recover assets alleged to belong to the bankrupt. The court set aside the decree, holding that a suit in equity or an action in law was the proper procedure. In re Bonesteel, 7 Blatchf. 175; 3 Fed. Cas. 849.

In the case of a mortgage given for some considerations that were legal and some that were illegal, it will be held void in a suit by the assignee in bankruptcy only as to the latter. Cramton v. Tarbell, 6 Fed. Cas. 745.

A deed made by a bankrupt for a valuable consideration will not be set aside in bankruptcy unless it shall be shown that the vendee had reason to believe that the vendor intended to violate the Bankrupt Act. Darby v. Lucas, 5 N. B. R. 437; 1 Dill. 164; 6 Fed. Cas. 1183, 1184.

A general assignment for the benefit of creditors, without fraud, a year before the debtor filed his petition in bankruptcy, is valid as against the assignee. In re Arledge, 1 N. B. R. 644; 1 Fed. Cas. 1127.

After the debtor firm had allowed its paper to go to protest, and some of its property had been seized by the United States for alleged violations of the internal revenue laws, it transferred its real estate and certain stocks of goods to some of its creditors. The court of bankruptcy decided that the transfers were void, and refused a discharge under the Act of 1867. In re Louis et al., 3 Ben. 153; 15 Fed. Cas. 940.

If one of the bankrupt's motives in making a conveyance was to defraud his creditors, it is void notwithstanding there were other motives which were unobjectionable. Burrill v. Lawry, 2 Hask. 228; 4 Fed. Cas. 829.

It is a rule of universal application in all cases of fraud on the part of a debtor or seller of property that notice of facts sufficient to put a party upon inquiry is sufficient to charge the purchaser with knowledge. Hamlin v. Pettibone et al., 6 Biss. 167; 11 Fed. Cas. 373.

An assignment was held not to be void under the Act of 1867 (section 35), that was made by the bankrupt in execution of a trust, and in obedience to a decree in equity by a state court. In re Myers, 2 Hughes, 230; 17 Fed. Cas. 1079.

Grantees of a bankrupt are obliged to take notice of the pendency of proceedings. Morse v. Godfrey et al., 3 Story, 364; 17 Fed. Cas. 854 (1844).

Under the Act of 1841 it was held that a transaction occurring within two months before bankruptcy was *prima facie* void. McLean v. La Fayette Bank et al., 3 McLean, 587; 16 Fed. Cas. 264 (1846).

Where an assignment is void under the Bankrupt Act, though not under the laws of the state, the property transferred is liable to be levied upon

by a judgment creditor. McLean v. Meline et al., 3 McLean, 199; 16 Fed. Cas. 282 (1843).

About fifteen months before the commencement of proceedings, the bankrupt had made a conveyance for the benefit of his wife and children. He was in embarrassed circumstances at the time. It was held that the assignee in bankruptcy could maintain a suit to set aside the conveyance. Pratt v. Curtis, 2 Low. 87; 19 Fed. Cas. 1251.

Where the bankrupt made an agreement when he was solvent, on an adequate consideration, and made a conveyance in pursuance of such agreement within four months before the filing of the petition, the court refused to set aside the conveyance. Post v. Corbin, 5 N. B. R. 11; 19 Fed. Cas. 1090.

Where a conveyance has been made in fraud of the rights of creditors, and the grantee has sold the property to a third person, a bill by the assignee in bankruptcy to set aside such conveyance, where the second grantee is made a party defendant, should charge that he had knowledge of the fraud. Pratt v. Curtis, 2 Low. 87; 19 Fed. Cas. 1251.

The giving of a mortgage for $4,000 for a consideration of $1,000, was held to be fraudulent *prima facie;* and the court ordered that out of the proceeds of the sale of the mortgaged property, the marshal pay to the petitioning creditors, who had conducted the proceedings against the conveyance, their costs and expenses, and that the balance be paid to the mortgagee. In re Dumont, 7 Fed. Cas. 1184.

The district court for Michigan refused to determine by summary proceedings the validity of the title of a general assignee for the benefit of creditors under an assignment made before the commencement of the proceedings. In re Marter, 12 N. B. R. 185; 16 Fed. Cas. 857.

It was held in Michigan, under the Act of 1867, that a general assignment for the benefit of creditors was not necessarily a violation of the Bankrupt Act. Ibid.

Where a debtor had conveyed his books of accounts to a voluntary assignee, an assignee in bankruptcy can only recover them by a bill in equity or an action at law, and not on a motion in the bankruptcy proceedings. Rogers v. Winsor, 6 N. B. R. 246; 20 Fed. Cas. 1132.

It was held to be a fraudulent transfer for an insolvent firm to give notes for the interest of a retiring partner to the person from whom he borrowed the money to purchase such interest, and secure the indorsement by a third person of such notes by a mortgage of firm property. Mattocks v. Rogers et al., 1 Hask. 547; 16 Fed. Cas. 1149.

Property purchased with a firm's money, but conveyed to and standing in the name of one of the partners, is in equity the property of the firm, which being bankrupt, the assignee may maintain a suit to set aside the conveyance as fraudulent. Patrick v. Central Bank, 1 Dill. 303; 18 Fed. Cas. 1300 (1870).

It is not necessary to resort to a bill in equity to set aside a mortgage given after the commencement of proceedings in bankruptcy; a summary order will be made on petition. In re Sims, 16 N. B. R. 251; 22 Fed. Cas. 181.

It was decided that the burden of proof as to good faith and actual value was upon a mortgagee to whom the bankrupt had given a mortgage within two months prior to the filing of the petition to secure a debt then past-due. In re Sims, 19 N. B. R. 57; 22 Fed. Cas. 181.

The debtors gave a mortgage to a creditor when they had knowledge of facts sufficient to show that they were insolvent. Held, that the assignee in bankruptcy could maintain an action in trover to recover the value of the mortgaged property. Rison v. Knapp, 1 Dill. 187; 20 Fed. Cas. 835.

Where there are several creditors, the conveyance by a debtor of all his property to one of them is *prima facie* void; so, also, is a conveyance not made in the ordinary course of business. Ibid.

The vendee purchased certain goods knowing that his vendees held them under mortgage from debtors who had failed in business. It was held that he was chargeable with knowledge of the relations between the bankrupts and his own vendors. Ibid.

To a suit by an alleged assignee of a bankrupt to set aside a fraud, an objection that the plaintiff is not such assignee must be made by plea, and is not available as a ground of demurrer. Nicholas v. Murray, 5 Saw. 20; 18 Fed. Cas. 174 (1878).

Where a creditor, knowing that the property of his debtor was insufficient to pay the latter's debts, took security upon such property, he was held to be chargeable with knowledge that the transaction was fraudulent within the amendment of 1874. Robinson v. Tuttle et al., 2 Hask. 76; 20 Fed. Cas. 1049.

A deed was made over six months before the filing of a petition in bankruptcy, but not recorded until within six months. The law of the state was that a deed should take effect as to subsequent purchasers and creditors only from the time of record. It was held to be a transfer of property within six months under the Act of 1867. Thornhill v. Link, 8 N. B. R. 521; 23 Fed. Cas. 1143.

The marshal took possession of certain goods of the bankrupt under a provisional warrant, and delivered them to the assignee. Later, the latter filed a bill in equity to set aside certain transactions respecting such goods that were alleged to be fraudulent. The court held that the assignee could not maintain the bill, as his possession of the goods was not disputed. Smith v. Claflin et al., 19 N. B. R. 523; 22 Fed. Cas. 485.

Held, under the amendment of 1874, that a sale which was an act of bankruptcy on the part of the debtor was not void as to the vendee unless he was chargeable with knowledge that it was made in violation of the Bankrupt Act. Tinker v. Van Dyke et al., 14 N. B. R. 112; 23 Fed. Cas. 1297.

The vendee of a debtor had knowledge of his intention to use the proceeds of the sale to prefer certain creditors. It was held that this did not avoid the sale. Van Kleeck v. Miller et al., 19 N. B. R. 484; 28 Fed. Cas. 1025.

A debtor had made two successive assignments to the same person

one voluntary, with preferences, and the other under the laws of the state. Subsequently, he filed a petition in voluntary bankruptcy. The court held that the assignee under the previous assignments could not be compelled to deliver the property which had come into his possession to the assignee in bankruptcy. Sullivan v. Hieskill, Crabbe, 525; 23 Fed. Cas. 349 (1843).

A voluntary assignment was held not to be void because it named as trustee a clerk of the assignor, who was a man of good character though without financial responsibility, or because it permitted the sale of the goods assigned on a credit of not more than thirty days. In re Walker, 18 N. B. R. 56; 29 Fed. Cas. 3.

An assignment, without preferences, in compliance with the insolvent law of the state, may, nevertheless, be a fraud upon the Bankrupt Act, and the assignee can recover property so transferred. In re Temple, 4 Saw. 92; 23 Fed. Cas. 835.

Insolvent debtors made a general assignment for the benefit of creditors under a state law, the deed being regularly recorded, and the assignee giving sufficient security. The debtors afterward became bankrupts. No fraud appearing, the voluntary assignee was not required to turn over the property to the assignee in bankruptcy. Sedgwick v. Place, 1 N. B. R. 673; 21 Fed. Cas. 998 (1868).

After a voluntary assignment of a debtor, the sheriff levied on his property, which was sold and the proceeds paid over to the judgment creditors. Later, proceedings in bankruptcy were commenced. Held, that the assignee by a suit in equity could have the assignment set aside and recover from the execution creditors the amounts received by them. Linder v. Lewis et al., 4 Fed. Rep. 318.

Judge Nixon held in the case cited that "the principle is well settled in law and common sense that a voluntary settlement by a man who is indebted is fraudulent and void if debts and contingent liabilities existing at the time of the conveyance are paid by contracting other obligations which afterward resulted in insolvency." Spaulding v. McGovern et al., 22 Fed. Cas. 802.

A bankrupt having obtained his discharge, a proceeding to set aside an alleged fraudulent purchase for his benefit commenced four years thereafter could not be prosecuted summarily on a motion. The remedy must be by plenary suit. In re Herdic, 40 Fed. Rep. 360.

An assignee in bankruptcy as representative of the creditors may attack transfers that would be binding upon the bankrupt himself. Adams v. Merchants' Nat. Bank, 2 Fed. Rep. 174.

Held, in the case cited, that an assignee can only recover property unlawfully transferred by a suit under sections 5046 or 5129, R. S. Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; 22 Fed. Cas. 860.

A transfer in execution of a contract made, when there was no circumstance to impeach it as an intended fraud on the Bankrupt Act, is valid, and cannot be set aside in bankruptcy. In re Wood, 5 N. B. R. 421; 30 Fed. Cas. 423 (1871).

A conveyance in pursuance of a prior agreement will be sustained in bankruptcy only where the terms of the agreement were specific, and this fact is established by competent testimony. In re Wood, 5 Fed. Rep. 443.

In a suit brought by an assignee in bankruptcy to set aside a voluntary assignment made less than four months before the filing of the petition, Judge Blatchford said: "As the assignment is avoided not for any fraud in fact, but only as voidable under the bankruptcy statute, and as it would have been valid if this suit had not been brought, the defendant must be allowed on the accounting for all proper expenses and services under the assignment prior to the beginning of this suit." Wald v. Wehl, 6 Fed. Rep. 163.

Judge McCreary expressed the opinion that, where a fraudulent intent appears, it is not necessary to show injury to the creditors to avoid a conveyance. Burdick v. Gill et al., 7 Fed. Rep. 668.

Circumstances sufficient to put a prudent man upon inquiry will charge a creditor with reasonable cause to believe his debtor insolvent. Webb v. Sachs, 4 Saw. 158; 29 Fed. Cas. 523.

Held, under section 35 of the Act of 1867, that a sale by an insolvent debtor within six months before the commencement of proceedings in bankruptcy is void only when done with a fraudulent intent and with a knowledge of such intent on the part of the vendee. Tiffany v. Lucas, 15 Wall. 410.

Under the circumstances of the case cited, the court held in a suit of equity by an assignee in bankruptcy to set aside conveyances by the bankrupt alleged to have been made in fraud of his creditors, the allegations were not supported. Norton v. Hood, 124 U. S. 20.

Judge Knowles, of the district court of Rhode Island, held that to defeat a mortgage given by the bankrupt the assignee must show that the mortgagor was insolvent when he executed it; that the mortgagee had reasonable cause to believe that the mortgagor was insolvent, and that the mortgagee knew that the mortgage was made in fraud of the Bankrupt Act. Peckham v. Cozzens, 3 Fed. Rep. 794.

Where one purchased from a vendee with knowledge of suspicious circumstances connected with the purchase by the latter, he is presumed to know the infirmity of the title that he acquired thereby. Walbrun v. Babbitt, 16 Wall. 577.

A retail merchant, while insolvent, sold his entire stock of goods. The sale was held to be *prima facie* fraudulent; but it was further held that the vendee might establish good faith by evidence that he had made inquiries as to the solvency of the vendor. Ibid.

To invalidate a mortgage under section 35 of the Act of 1867, it was held that it must be shown that the mortgagee had reasonable cause to believe that the mortgagor was insolvent at the time he executed the mortgage, and that it was made with intent to defeat the Bankrupt Act. Barbour v. Priest, 103 U. S. 293.

From the evidence in the case, the court affirmed a decree of the circuit court that the conveyance was fraudulent under the Act of 1867. Wolfolk v. Nesbit, 154 U. S. 650.

The supreme court affirmed a decree of the circuit court setting aside a conveyance by a bankrupt to his wife, but directed it to be modified so far as it contained a personal decree aganist the wife, or the rents, issues and profits and the use and occupation of the premises. Clark v. Beecher, 154 U. S. 631.

A transfer made out of the usual course of business by an insolvent debtor imposes upon the transferees the duty of inquiring into his financial condition. Judson v. Courier Co., 15 Fed. Rep. 541.

The assignment of an insurance policy to the bankrupt's sons in trust for their mother was held to be invalid. Barnes v. Vetterlein, 16 Fed. Rep. 218.

To avoid a deed of trust under the amendment of 1874, it was necessary that it should have been executed within two months of the filing of the petition; that the bankrupt must have been insolvent, or it must have been made in contemplation of insolvency; it must have been made with the view to give a preference, and the party to whom it was made must have had reasonable cause to believe that the bankrupt was insolvent, and must have known that the deed of trust was in violation of the Bankrupt Act. May v. LeClaire, 18 Fed. Rep. 164.

Proceedings to assert a claim of an assignee in bankruptcy to a fund claimed by a third person by virtue of a transfer from the bankrupt's firm, should be conducted as a separate action, and not on a summary petition. Smith v. Mason, 14 Wall. 419.

Held, under the Act of 1867 (section 5046, R. S.), that to enable an assignee in bankruptcy to recover, the thing sought to be recovered must be such that when recovered it will be assets of the estate, and that the action must not be an action of tort for damages such as would be strictly personal under the common law. Further held that the assignees of a bankrupt bank might sustain a bill in equity to recover losses incurred by the gross negligence of directors, within the terms of the section mentioned. Trustees of M. B. F. & D. S. Co. v. Bosselux et al., 3 Fed. Rep. 817.

A creditor can secure a lien upon property fraudulently conveyed by securing a judgment against the debtor in the case of real estate, and by the levy of an execution in the case of personal property, and such liens will be valid if they are obtained before the filing of the petition against the assignee in bankruptcy. But a creditor cannot attack an assignment who has assented to its execution with a full knowledge of the facts. Such a creditor may, however, purchase a claim from another creditor who has not participated in the fraud and impeach the assignment on the claim so purchased. Until a receiver is appointed under a creditor's bill it constitutes no lien against chattels that are subject to levy and sale on execution, which is valid as against the assignee in bankruptcy. Johnson et al. v. Price, 13 Fed. Cas. 793.

An assignee in bankruptcy of a corporation brought a suit in equity to have a mortgage declared void on the ground that it was given by the bankrupt corporation to one of its directors. The circuit court held

that the action could not be sustained unless the assignee offered to return to the defendant his advances under the contract. Miller v. Halsted, 17 Fed. Cas. 318.

An assignee in bankruptcy cannot elect to consider a voluntary assignment for the benefit of creditors as void in one particular and valid as to everything else. Until he has elected to treat the assignment as void, it is to be treated as valid. Wehl v. Wall, 3 Fed. Rep. 93.

The sufficiency of the evidence in an action by an assignee in bankruptcy to vacate a conveyance on the ground of fraud is considered in the case cited. Benton v. Allen et al., 2 Fed. Rep. 448.

Held, that the bankrupt is not a proper party to an action by an assignee to set aside a conveyance made by the bankrupt. Ibid.

The right of an assignee in bankruptcy to recover property or its value which has been transferred by the bankrupt in fraud of the previous Bankrupt Act is properly a statutory one. It is as indispensable to the right of the assignee to require that the transfer be one made within the two months as it is that it be one made by a person who was insolvent or in contemplation of insolvency. So held, under the amendment of 1874 to the Act of 1867. Anibal v. Heacock, 2 Fed. Rep. 169.

The assignee can impeach a conveyance by the bankrupt as fraudulent, notwithstanding the creditor's claim has not been reduced to judgment and made a lien on the property conveyed. Barker v. Barker's Assignee, 2 Woods, 87; 2 Fed. Cas. 807.

In bringing an action to set aside a sale of property as void against creditors, the assignee is deemed to represent the creditors, and may attack the sale, notwithstanding it was binding as against the bankrupt himself. Allen v. Massey, 1 Dill. 40; 1 Fed. Cas. 504; affirmed by the supreme court in 17 Wall. 351.

Judge Drummond expressed the view that an adjudication in bankruptcy is equivalent to the recovery of a judgment and a levy, and that the assignee has the same rights that a judgment creditor would have to have a transaction in fraud of creditors nullified. In re Gerney, 7 Biss. 414; 11 Fed. Cas. 121.

The assignee in bankruptcy brought suit against the bankrupt and his son to set aside a transfer of real estate made to the latter two years before the proceedings in bankruptcy were commenced. There was conflicting testimony as to the adequacy of the price, and the other circumstances of the sale and the possession of the property. The suit was dismissed. Cookingham v. Ferguson et al., 8 Blatchf. 488; 6 Fed. Cas. 450.

Where it appeared that a conveyance was fraudulent and intended to hinder creditors, judgment was rendered in favor of the assignee for the value of the property conveyed, notwithstanding the conveyance was made more than six months before the commencement of proceedings. Hyde v. Sontag et al., 1 Saw. 249; 12 Fed. Cas. 1113.

Section 14 of the Act of 1867 was held to vacate an attachment of goods

belonging to the bankrupt under process of a state court within four months before the filing of the petition. Pennington v. Lowenstein et al., 1 N. B. R. 570; 19 Fed. Cas. 168.

Two executions had been levied on the property of the bankrupt before the commencement of proceedings. The first was avoided by the assignee as a preference. Held, that he was entitled to the goods or their proceeds as against the second execution creditor. Claridge v. Kulmer et al., 1 Fed. Rep. 399.

The district court in bankruptcy had declared a certain transaction to have been an act of bankruptcy. Later a bill in equity was filed in the same court to impeach the same transaction. Held, that the court was not concluded by its former adjudication. Harmanson v. Bain et al., 1 Hughes, 188; 11 Fed. Cas. 531.

The bankrupt had sold and transferred to a creditor, who had knowledge of his insolvency, all of his real and personal property. It was decided that the assignee in bankruptcy could maintain an action of trover to recover the value of the personal property so transferred. Foster v. Hackley et al., 2 N. B. R. 406; 9 Fed. Cas. 545.

A transfer by a bankrupt to his sister whose money he had taken for investment and not accounted for, was set aside at the suit of the assignee. Bartlett v. Mercer et al., 8 Ben. 439; 2 Fed. Cas. 976.

An assignee cannot bring an action in a district court other than the one where the proceedings in bankruptcy are pending. Jobbins v. Montague et al., 6 N. B. R. 509; 13 Fed. Cas. 648.

A lease fraudulently transferred by the bankrupt may be followed by the assignee and recovered from any subsequent holder with notice. Jones v. Slauson, 33 Fed. Rep. 632.

After the commencement of proceedings in bankruptcy, only the assignee has a right to recover for the benefit of creditors property of the bankrupt fraudulently transferred; and the right does not pass to the creditor by reason of the assignee's failure to institute proceedings. Glenny v. Langdon, 98 U. S. 20; Trimble v. Woodhead, 102 id. 647; Moyer v. Dewey, 103 id. 301.

In a case where an insolvent debtor had made a fraudulent sale of property and immediately thereafter proceedings in bankruptcy were commenced against him, it was held that the assignee could recover the goods and have the sale set aside. Allen v. Massey, 17 Wall. 351.

After the death of an assignee in bankruptcy, a creditor may maintain a bill in equity to set aside a fraudulent conveyance. Clark v. Clark, 17 How. 315.

Held, in the case cited, that where a husband had conveyed real estate to his wife under circumstances constituting a fraud upon his creditors, his assignee in bankruptcy could not take personal judgment against her for its value. Trust Co. v. Sedgwick, 97 U. S. 304.

After the appointment of an assignee in bankruptcy, a receiver appointed by a state court in supplementary proceedings cannot maintain a suit to recover property which was transferred by the bankrupt in

fraud of creditors. Such a suit must be brought by the assignee in bankruptcy. Olney v. Tanner, 18 Fed. Rep. 636.

The party to whom an insolvent debtor had made a transfer continued to employ him, and the business was continued to work up the old stock, the performance of outside contracts and the purchase of goods therefor. Held, that the transfer was not necessarily fraudulent under these circumstances. Ibid.

It was held that the vendee of a stock of goods having actual or constructive knowledge that the vendor was selling to hinder or delay his creditors, would not be protected in bankruptcy, notwithstanding he had paid an adequate consideration for the property. Singer v. Jacobs, 11 Fed. Rep. 559.

A debtor had transferred property to a creditor on an agreement that the latter should not prosecute him for a misdemeanor. The creditor had knowledge of his insolvency. The transfer was set aside in bankruptcy. Sharp v. Phil. W. Co., 10 Fed. Rep. 379.

In an action brought to set aside a transfer, all the parties to the transaction are necessary parties to the suit. Judson v. Courier Co., 15 Fed. Rep. 541.

An assignment for the benefit of creditors will only be set aside on proof of the fraudulent intent in its inception, and is not invalidated by subsequent acts of the assignee. Olney v. Tanner, 10 Fed. Rep. 101.

Held, that an assignment for the benefit of creditors under a state law is not absolutely void, but subject to be avoided by proceedings under the Bankrupt Act. Ostrander v. Neunch, 12 Fed. Rep. 562.

Creditors of a bankrupt cannot bring an action for the annulment of a fraudulent conveyance; it must in all cases be brought by the assignee. New Orleans N. B. A. v. Le Breton, 14 Fed. Rep. 646.

An assignee in bankruptcy may recover the bankrupt's interest in property fraudulently conveyed, notwithstanding no creditor is in a position to attack the transfer. Platt v. Matthews, 10 Fed. Rep. 280.

All creditors, according to their respective interests, must have the benefit of property fraudulently conveyed and recovered by the assignee. In re Lowe, 19 Fed. Rep. 589.

A mercantile firm executed a chattel mortgage to indemnify an indorser of their paper. They lived in different towns, and the mortgage was recorded in one town, but not in the other. They retained possession of the goods, selling parts of them from time to time in the course of business with the knowledge of the mortgagee. Subsequently, when he knew that the mortgagors were insolvent, the mortgagee took possession of what remained. Proceedings in bankruptcy having been commenced against the mortgagor, the assignee brought an action against the mortgagee for the value of the goods which he had taken under the power conferred by the mortgage. It was held, under the laws of Michigan, that the chattel mortgage was void on account of the failure to record it in both townships; that the taking possession could not be based upon the void mortgage, and that it was a preference, under sec-

tion 35 of the Act of 1867; hence the assignee had a right to recover the value of the goods. Kane v. Rice, 10 N. B. R. 469; 14 Fed. Cas. 125.

After the debtors had made a voluntary assignment for the benefit of their creditors, certain creditors obtained judgment against them and levied upon their goods in the hands of the voluntary assignee. The sheriff being indemnified, sold the goods and paid the judgments. Less than three months afterward, proceedings in bankruptcy were commenced against the debtors by other creditors. Upon the appointment of an assignee, he filed a bill in equity against the voluntary assignee and the judgment creditors to set aside the assignment and compel the judgment creditors to account for the property taken under their execution. Judge Choate held, that the title of the assignee in bankruptcy related back to the making of the voluntary assignment; that the liens of the executions were cut off, and that the assignee could recover from the sheriff and the judgment creditors the property taken under the execution, or its value. Linder v. Lewis et al., 10 Ben. 49; 15 Fed. Cas. 554.

A bankrupt firm made an assignment to M. for the benefit of their creditors. A month later they were adjudged bankrupts, and an injunction was issued against M., forbidding him to sell the assigned property. The assignee in bankruptcy brought suit against M. to set aside the assignment. On final hearing, two years after the commencement of the proceedings, the assignment to M. was set aside. It was held that the assignee's title was substituted for any title that existed in M. by vritue of the assignment as of the date of the filing of the petition, and that M. could not be allowed for any expense incurred thereafter. Clark v. Marx, 5 Fed. Cas. 898.

An assignee in bankruptcy, who has caused an assignment for the benefit of creditors to be set aside, gets no better title to the property than the trustee under the deed of assignment had, and must be regarded as privy to a suit between the trustee and the sheriff, who had levied an execution on the property after the assignment and before the proceedings in bankruptcy, which was decided in favor of the sheriff. The conclusion of the court was that the lien of the execution was valid against both the trustee and the assignee. In re Beisenthal et al., 10 Ben. 42; 3 Fed. Cas. 75.

An insolvent debtor made a settlement with his creditors by which he was to pay them 50 per cent. of the amounts due them, respectively. He paid three or four of them, and then it appeared that he either could not, or would not, pay the others. Within four months after the payments, the debtor was forced into bankruptcy. The assignee brought suit against the creditors who had received payment, and the jury found for the plaintiff in that action. The court refused to grant a motion for a new trial. Subsequently, having paid the judgment, the creditors were allowed to prove their debt against the estate of the bankrupt. Clark v. Skilton et al., 5 Fed. Cas. 925.

Construing section 35 of the Act of 1867, Judge McDonald, of the dis-

trict court of Indiana, said: "The complainant, in order to succeed, must prove that the mortgagor at the time of executing the mortgage was either insolvent or contemplated insolvency or bankruptcy, and that the mortgagee at the time had reasonable cause to believe this fact. And in addition to this, it must be proved that the mortgage was made with a view either to prevent the property mortgaged from going to the assignee in bankruptcy, or to prevent the same from being distributed under the Bankrupt Act, or to defeat the object of, or in some way impair, hinder, impede or delay the operation of the act, or evade its provisions." Sidener v. Clier, 4 Biss. 391; 22 Fed. Cas. 101.

The laws of New York provide that unless a debtor who has made a voluntary assignment for the benefit of his creditors files an inventory within thirty days, the assignment shall be void. C. made a voluntary assignment in that state December 20, 1877. On January 5, 1878, the sheriff levied an execution on his property in an action commenced by a creditor. On January 9, 1878, proceedings in bankruptcy were commenced, and on the 19th of that month an adjudication was had; thereupon the assignee took possession of the property. In March of the same year the sheriff applied to the court, praying that the property be applied to the execution in his hands on the ground that the voluntary assignment was void by reason of the failure to file an inventory. The assignee in bankruptcy resisted the application on the ground that the voluntary assignment was invalid as to him. The court refused the application of the sheriff for the purpose of allowing the assignee in bankruptcy to avoid the voluntary assignment and establish his right to the property. In re Croughwell, 9 Ben. 360; 6 Fed. Cas. 902.

In the case cited, decided under the present law, it appeared that Gutwillig, a few days previous, made a general assignment for the benefit of his creditors. The petitioners asked that Gutwillig be adjudged a bankrupt and that the assignee be restrained from disposing of the property until a decision was had upon the petition. The court held that voluntary assignments of all a debtor's property in trust for creditors are incompatible with the bankruptcy law, because if allowed to stand against a trustee in bankruptcy they defeat the most essential element of the bankruptcy law, namely, the distribution of the debtor's assets in the manner prescribed by the act, and that in the eye of the bankruptcy law the voluntary assignee is an accomplice in fraud upon the act and, therefore, can hold nothing by the assignment as against the trustees in bankruptcy. In re Gutwillig, N. Y. Law J., December 6, 1898.

[See notes to §§ 3, 60 and 70.]

SET-OFFS.

§ 68. **Set-Offs and Counterclaims.**— (a.) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b.) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

The doctrine of set-off was not enlarged by section 20 of the Act of 1867. Sawyer v. Hoag, 17 Wall. 610.

A stockholder having a claim against a corporation cannot set it off against unpaid subscriptions to its shares. Ibid.

The term "mutual credits" in section 20 of the Act of 1867 cannot be held to include a trust. Libby v. Hopkins, 104 U. S. 203.

The words "without set-off" on the face of a note or bill of exchange were held not to defeat the operation of the provision in the Act of 1867, respecting set-offs. (Section 5073, R. S.) Harmonson v. Bain et al., 1 Hughes, 391; 11 Fed. Cas. 539.

Under the Act of 1867 a debtor of the bankrupt could avail himself of set-offs purchased before the filing of the petition with knowledge of insolvency, and with intent to use them for that purpose. Lloyd v. Turner, 5 Saw. 463; 15 Fed. Cas. 732.

A personal judgment cannot be rendered against a creditor for money in his hands, on a motion to expunge a proof of debt, and to establish a set-off. In re Forbes, 5 Biss. 510; 9 Fed. Cas. 394.

When an assignee in bankruptcy brings suit against a creditor who has proved his claim, the defendant will be allowed to withdraw his proof, and plead the claim as a set-off. Harmonson v. Bain et al., 1 Hughes, 391; 11 Fed. Cas. 539.

A debt resulting from a deposit of goods can be set off by the bailee against the value of the goods. Ex parte Caylus et al., 1 Low. 550; 5 Fed. Cas. 325.

Costs charged against a petitioner in involuntary bankruptcy upon the dismissal of his petition cannot be set off against his claim due from the alleged bankrupt. In re Lowenstein et al., 3 Ben. 422; 15 Fed. Cas. 1025.

Held, under the Act of 1800, that a partnership debt might be set off against the separate claim of one of the partners. Tucker v. Oxley, 5 Cranch, 34.

When an assignee in bankruptcy sues a creditor who has proved his debt, and the latter does not plead it as a set-off, and a judgment is recovered against him by the assignee, the court may allow him to set off his claim against the judgment. Harmonson v. Bain et al., 1 Hughes, 391; 11 Fed. Cas. 539.

The acceptor or indorser of a bill of exchange who has not paid it before the commencement of proceedings cannot prove the debt in bankruptcy; but if he pays it after bankruptcy, may offset it against the bankrupt's assignees. Marks et al. v. Barker et al., 1 Wash. C. C. 178; 16 Fed. Cas. 765.

The Act of 1867 (section 5073, R. S.) did not permit a set-off against the principal of a debt due a creditor of anything except a debt from the creditor to the bankrupt. In re Purcell, 18 N. B. R. 447; 20 Fed. Cas. 61.

Under the Act of 1867, debts were provable against the bankrupt's estate as of the date when the petition was filed, and where a set-off was sought it must have been of mutual credits then existing. Boatman's Bank v. State Sav. Assn., 114 U. S. 265.

A judgment obtained by an assignee in bankruptcy for a penalty incurred by violation of the state law against usury could not be set off against a claim of the judgment debtor against the bankrupt's estate. So held, under the Act of 1867 (section 5073, R. S.) Wilson v. Nat. Bank, 3 Fed. Rep. 391.

When a depositor in a bank becomes a bankrupt, his balance may be set off against notes upon which he is the principal, and also those upon which he is an indorser if the principals are insolvent. When the bank has contingent or unliquidated claims, it may retain the deposit until the amount of the provable claim is determined, and then set it off. Ex parte Howard; In re North et al., 2 Low. 487; 12 Fed. Cas. 653.

Notwithstanding the language of section 20 of the Act of 1867 is general, and only two exceptions are named, it is held that it did not intend, outside of these exceptions, to foreclose a court of equity from disallowing a set-off when it would, on the whole, work injustice. Hitchcock v. Rollo, 3 Biss. 276; 12 Fed. Cas. 231; Hitchcock v. Rollo, 6 Chi. Leg. News, 9; 12 Fed. Cas. 237.

An insolvent debtor had made an arrangement with a firm for a set-off of debts. All of the partners assented except one, who afterward concurred, but in the meantime the individual debtor had made an assignment, and was subsequently adjudged a bankrupt. It was held that the set-off could not be recognized in the bankruptcy proceedings, as it had not been completed until after the rights of the creditors had become fixed by the assignment. Clark v. Sparhawk et al., 5 Fed. Cas. 928.

Prior to the proceedings in bankruptcy, a party purchased a storage receipt issued by the bankrupt, having at the time no knowledge of his insolvency. The purchaser at the time had money in his possession which belonged to the bankrupt. The assignee in bankruptcy having brought a suit to recover such money, it was decided that the value of the wheat represented by the storage receipt could be set off. McCabe v. Winship, 17 N. B. R. 113; 15 Fed. Cas. 1224.

The holder of a note to whom it had been assigned only for the purpose of using it as a set-off, proved it less the amount he owed the bankrupt. The court held that his proof should be expunged, and that he should prove it in full as trustee for the equitable owner. In re Lane et al., 2 Low. 305; 14 Fed. Cas. 1069.

An assignee in bankruptcy, under the Act of 1800, brought suit against the maker of a promissory note given after the date of the commission. The defendant sought to set off a bond given by the bankrupt. The court said: "Clearly, it was not a mutual credit before the bankruptcy,

and, therefore, cannot be set off under the act of congress." McIver v. Wilson, 1 Cranch C. C. 423; 16 Fed. Cas. 154 (1807).

A bankrupt had given accommodation notes to a creditor, and the latter discounted them, and they were proved by the holder against the estate. A composition having been effected, it was held that the dividends paid upon the notes could be set off against the dividends due the creditor to whom the accommodation notes were originally given. In re Purcell, 18 N. B. R. 447; 20 Fed. Cas. 61.

The claim of an insuree for a loss under a policy of insurance can be set off against his indebtedness to the company. The rights of the parties are to be determined by the facts as they existed at the time of the loss. Drake v. Rollo, 3 Biss. 273; 7 Fed. Cas. 1053.

The I. Fire Insurance Co. had issued eight policies to different parties, and subsequently the H. Fire Insurance Co. issued to the I. Co. policies of reinsurance on the same risks. The property was destroyed by fire. The I. Co. was adjudged bankrupt, and the assignee sued the H. Co. on the policies of reinsurance. In the meantime, and before the filing of the petition, the H. Co. had bought up five of the original policies, and in the action by the assignee filed notice of a set-off for the amount. It was held that the set-off must be allowed. Hovey et al. v. Home Ins. Co., 10 N. B. R. 224; 12 Fed. Cas. 604.

In a composition case the bankrupt stands as to a set-off in the position of an assignee, if none has been appointed. Ex parte Howard; In re North et al., 2 Low. 487; 12 Fed. Cas. 653.

A debtor of the bankrupt who purchased a claim against him after his insolvency cannot set it off against his debt, but can only prove his claim and share with other creditors in the dividends. Mattocks et al. v. Lovering et al., 16 Fed. Cas. 1140.

A creditor opened a new account with his debtor under an agreement to turn over the cash or notes received for goods thereafter forwarded. Held, that he could not set off the amount due from him under the new account against the amount due to him on the old account. In re Troy Woolen Co., 8 N. B. R. 412; 24 Fed. Cas. 245.

It was held in the case cited that one partner had the right to set off against the amount due from him to his bankrupt partner on the partnership transactions the independent debts due from the bankrupt to himself on transactions not connected with firm business. In re Voetter, 4 Fed. Rep. 632.

While the bankrupt law recognized the right of set-off, it is not equitable that a stockholder in an insurance company should set off his losses on insurance policies against his liability for the payment of the stock of the bankrupt company. Scammon v. Kimball, 8 N. B. R. 337; 21 Fed. Cas. 941 (1873).

It was held that a party had no right to set off claims under insurance policies executed by a bankrupt company against funds which he held as the treasurer of the company. His position as treasurer was unquestionably that of trustee, and, although he had the right to use the

treasury money in payment of interest, he was still a trustee, and not an ordinary debtor. Ibid.

The right of the assignee to property acquired by the bankrupt by descent after the petition is filed, and before decree, is subject to a set-off in favor of the administrator of the intestate of a debt due by the bankrupt to the intestate. Ex parte Newhall, 2 Story, 360; 18 Fed. Cas. 75-76.

It was held that a debtor of the bankrupt could set off against his indebtedness notes of the bankrupt which he had purchased before the filing of a petition in voluntary proceedings, although he had knowledge that the bankrupt was insolvent when he purchased the note. Mattox et al. v. Cady et al., 7 Am. Law Rec. 613; 16 Fed. Cas. 1154.

A debtor of the bankrupt, before the commencement of proceedings, but after insolvency, had purchased a demand against the bankrupt. It was held that it could not be set off against a negotiable note payable to the bankrupt, which had passed into the hands of the assignee in bankruptcy. Rawlins v. Twitchell et al., 2 Hask. 66; 20 Fed. Cas. 1137.

The bankrupt was indebted to a creditor on two distinct debts, and one of them was secured by a pledge with power to sell. Held, on the principle of set-off, that he could apply the surplus of the proceeds of the sale to the payment of the second debt. Ex parte Whiting, 2 Low. 472; 29 Fed. Cas. 1053.

A creditor had sought to obtain a preference by purchasing property of the bankrupt through an agent, and tendering the notes of the bankrupt in payment. The court held that in an action by an assignee to recover the value of such property the creditor could not set off the notes of the bankrupt. Fleming et al. v. Andrews, 3 Fed. Rep. 632.

A vendor had written to his vendee refusing to deliver goods on credit as he had previously agreed unless an old debt were paid. The vendee went into bankruptcy, and his assignee did not offer to complete the contract. Held, that the notice was not such a repudiation of the contract as would authorize its value being set off against the vendor's previous indebtedness. In re Wheeler, 2 Low. 252; 29 Fed. Cas. 873.

A debtor of an insurance company, knowing it to be insolvent, secured the assignment to himself of a policy. Subsequently, proceedings in bankruptcy were commenced against the company and the party claimed a set-off for the amount due on the policy. It was held that to allow it under such circumstances would be a substantial fraud on the statute and give an unjust preference to one creditor. Hitchcock v. Rollo, 3 Biss. 276; 12 Fed. Cas. 231; Hitchcock v. Rollo, 6 Chi. Leg. News, 9; 12 Fed. Cas. 237.

The term "mutual credits" is one which is not generally used in the statutes of the different states relating to set-off, and is peculiar to the bankrupt laws of England and the United States. It has a more extensive meaning than the term "mutual debts." Goods deposited as a pledge or collateral security are not a mutual credit; but if held before the filing of the petition in good faith, the excess above the debt for which they are security becomes a debt of the assignee or the bankrupt

capable of being set off like any other mutual debt. If such goods are sold after the filing of the petition, the excess belongs to the assignee. Goodrich v. Dobson, 43 Conn. 576; 30 Fed. Cas. 1081 (1876).

In September, 1876, H. & B. recovered judgment against H. H. & B. had suspended payments in October, 1875, and in December of that year a petition in involuntary bankruptcy was filed against them. Subsequently they offered a composition, which H., acting as the representative of a company which was a creditor, opposed; it was confirmed and H. accepted the money and indorsed notes provided for by the terms of the composition. H. having in the meantime bought up some claims against H. & B., brought this suit for an injunction against further proceedings on the judgment against him and for a set-off of the claims which he had bought against the judgment. It was decided that a court of equity will not aid a debtor to a bankrupt's estate to set off debts bought on speculation, and that H. having failed to assert his set-off when the composition was made, and having received payments under the composition, could not afterward ask a court of equity to enforce a set-off. Hunt v. Holmes et al., 16 N. B. R. 101; 12 Fed. Cas. 916.

WARRANTS TO SEIZE PROPERTY.

§ 69. **Possession of property.**—(a.) A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

After adjudication the bankrupt remained in possession of his assets, sold parts of them, and announced his purpose to go to Europe to settle his business there. The court ordered that a provisional warrant be issued. In re Hale, 18 N. B. R. 335; 11 Fed. Cas. 180.

The fact that the marshal took possession of property not belonging to the alleged bankrupt under a provisional warrant is not sufficient ground

for vacating the order by which the warrant was issued. In re Muller et al., Deady, 513; 17 Fed. Cas. 971.

In voluntary bankruptcy, under the Act of 1867, the court could take possession of the bankrupt's property on the filing of the petition and before the election of the assignee. The Ironsides, 4 Biss. 518; 12 Fed. Cas. 103.

An involuntary bankrupt after adjudication, but before the issuance of the warrant to the marshal, surrendered his property to the register. On the application of the marshal, after receiving the warrant, the court ordered the register to deliver the property to him. In re Howes, 7 Ben. 102; 12 Fed. Cas. 712.

The marshal, under a provisional warrant in bankruptcy, forcibly took property from the possession of a receiver appointed by a state court, and turned it over to the assignee in bankruptcy. The court refused to grant an order of sale to the assignee and ruled that he must enforce his right of possession in a plenary suit. In re Hulst, 7 Ben. 17; 12 Fed. Cas. 864.

In the absence of evidence disproving the statements made in the application for a provisional warrant, such a warrant will not be vacated by the court. In re Clark et al., 17 N. B. R. 554; 5 Fed. Cas. 855.

A provisional warrant was refused where the main facts were sworn to on information and belief. The court said that when a petitioner does not possess personal knowledge, the better practice is to file a separate petition supported by the affidavits of several persons having knowledge of the necessary facts. In re McKibben, 12 N. B. R. 97; 16 Fed. Cas. 210.

A provisional warrant commanded the marshal to take possession of the property of the bankrupt, and of all goods lately conveyed to one H. It was held that this was not authorized by section 40 of the Act of 1867, as the warrant could only command the marshal to take possession of the property of the debtor. In re Harthill, 4 Ben. 448; 11 Fed. Cas. 704.

Under a provisional warrant, the district court cannot order the seizure of property in the possession of a person to whom the debtor transferred it before the filing of the petition; but it may issue an injunction to prevent the disposal of the property. In re Holland, 12 N. B. R. 403; 12 Fed. Cas. 338.

A marshal who, under a provisional warrant, had taken possession of property conveyed by a voluntary assignment of the bankrupt, was ordered to return it; but upon condition that the voluntary assignee should pay his fees, release him from any claim for damages, and that he should not dispose of any of the property without leave of the court of bankruptcy. In re Manahan, 19 N. B. R. 65; 16 Fed. Cas. 569.

The alleged act of bankruptcy was the removal by the debtor company of its goods and chattels. It appeared that the removal was in fulfillment of a contract made before the commencement of the proceedings in bankruptcy. The court refused to appoint a provisional assignee, and said: "The exercise of this power — appointing a provisional as-

signee — is one of great delicacy, and should not be called into action unless the court is satisfied that it is necessary for the protection of the property, and that it will inure to the benefit of the creditors." M. & M. Nat. Bank v. Brady's B. I. Co., 5 N. B. R. 491; 16 Fed. Cas. 593.

Under the authority of a provisional warrant in bankruptcy, a United States marshal may levy on the goods of the bankrupt in possession of a third party who claims title to them. Sharp v. Doyle, 102 U. S. 686.

TITLE OF TRUSTEE — SALES.

§ 70. **Title to property.**— (a.) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

(b.) All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

(c.) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(d.) Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

(e.) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

(f.) Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him.

The Doctrine of Relation.

By relation, the property and rights of a bankrupt are vested in the assignee from the filing of the petition. McLean v. LaFayette Bank et al., 3 McLean, 185; 16 Fed. Cas. 253 (1843).

Under the Act of 1867 the assignment in bankruptcy relates back and takes effect as of the date of filing the petition. In re Patterson, 1 N. B. R. 125; 18 Fed. Cas. 1315 (1867).

The adjudication in bankruptcy relates back and takes effect as of the date of the filing of the petition. In England, prior to 1825, the adjudication had relation to and operated on the dealings of the bankrupt as of the date of the act of bankruptcy. In re Rust, 1 N. Y. Leg. Obs. 326; 21 Fed. Cas. 91 (1843).

The assignment in bankruptcy relates back to the commencement of bankruptcy proceedings. In re Scovill, 4 Cliff. 549; 21 Fed. Cas. 856 (1878).

After the commencement of proceedings in voluntary bankruptcy, an attachment from a state court was levied on property of the bankrupt. Held, that the assignment in bankruptcy related back to the commencement of proceedings, and vested the title in the assignee as of that day. Chapman v. Brewer, 114 U. S. 158.

Under the Act of 1841, a petitioner in voluntary proceedings was deemed a bankrupt from the time that he filed his petition. Ex parte Lee, 1 N. Y. Leg. Obs. 83; 15 Fed. Cas. 134 (1842).

The decree in bankruptcy retroacts to the time of the application, and if property is acquired by a bankrupt intermediate the verification and the offering of his petition, it would pass to the assignee. In re Abrahams, 5 Law Rep. 328; 7 Fed. Cas. 40 (1842).

Under the Act of 1841 the adjudication was held to relate back to the filing of the petition, and the title of the assignee to embrace all the

property the bankrupts then had. Ex parte Gen. Assignee, 5 Law Rep. 362; 10 Fed. Cas. 164 (1842).

As a general rule, under the Act of 1841, proceedings in bankruptcy were held to relate to the adjudication; but for some purposes the rights of the assignee extended back to the filing of the petition. Downer et al. v. Brackett et al., 5 L. J. 392; 7 Fed. Cas. 102 (1842).

On the principle that the adjudication relates back to the filing of the petition, an assignee in bankruptcy can recover all the property and interests which the bankrupt had at the time of the filing. In re Lake, 3 Biss. 204; 14 Fed. Cas. 944.

Under the Act of 1841, it was held that a decree of adjudication related back to the time of the filing of the petition; hence an attaching creditor could not proceed in his suit against the bankrupt to judgment because there was no party defendant properly before the court. If he proceeded in such case, and entered judgment and secured satisfaction of the same, he was not allowed to retain the money. The district court in bankruptcy is authorized to control such a suit, and the plaintiff may be permitted to enter his action and continue it, but not to proceed to trial and judgment. Ex parte Foster, 2 Story, 131; 9 Fed. Cas. 508 (1842).

[The above notes, as is true of some others compiled in this volume, possess little more than historical interest. The House Committee on the Judiciary, says: "Under section 70 an important change has been made from the former laws, as well as from proposed legislation. Under the act of 1867, as interpreted by the courts, it was held that the title of the bankrupt's property vested in the assignee as of the date of the filing of the petition in bankruptcy. This bill provides that the trustee shall 'be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt.' By this change the alleged bankrupt can sell and convey a perfect title up to the date of the adjudication, and the purchaser does not buy at his own risk and in danger of having secured an imperfect title by reason of an adjudication which may be made subject (subsequent) to the purchase. It does not follow that because a petition is filed against a person in a bankruptcy court he will be adjudged a bankrupt, and it seems but proper that the public in dealing with him until he is adjudged a bankrupt should deal without fear of loss or danger as to title." As mentioned in the "Editor's Note," the practitioner should construe the decisions here collated in the light of the law as it existed when the decision was rendered; and to that end ample means are supplied in this work.]

Interests that Pass to Trustee.

Household furniture was conveyed by bill of sale, but without actual change of possession, the furniture remaining in the house where the vendor and vendee both resided. This was held to be void against creditors under the statute of Missouri. Allen v. Massey, 1 Dill. 40; 1 Fed. Cas. 504; affirmed by the supreme court in 17 Wall. 351.

A bankrupt will be required by summary proceedings to pay to the assignee moneys belonging to the estate which he collected either before or after filing the petition. Payment of interest on mortgages from such moneys will not be allowed unless shown to be for the interest of the estate. In re Ettinger, 18 N. B. R. 222; 8 Fed. Cas. 809.

Membership in a produce exchange passes to the assignee in bankruptcy. In re Warder, 10 Fed. Rep. 275.

Tenancy by curtesy passes to the assignee in bankruptcy, subject to a statutory right of the husband and wife to continue to hold the land during her life. In re McKenna, 9 Fed. Rep. 27.

After an assignment in bankruptcy, the Alabama Claims Commission made an award in favor of the bankrupt. It was held that this passed to the assignee. Williams v. Heard, 140 U. S. 529.

The petitioners had been allowed to amend, and between the filing of the original petition and the amendment, the bankrupt had disposed of certain property. Held, that the property, nevertheless, passed to the assignee. Bank v. Sherman, 101 U. S. 403.

It is not a legal conveyance of land for a man to deliver a patent to his wife with the intention that she shall thereby receive the title; and the husband's assignee in bankruptcy can take the land, notwithstanding such delivery. Taylor v. Irwin, 20 Fed. Rep. 615.

A British subject who was adjudicated a bankrupt in 1868 had a claim at that time against the United States. Three years later an award was made in his favor. It was held that this passed to his assignee. Phelps v. McDonald, 99 U. S. 298.

The membership in a stock exchange is the subject of assignment in bankruptcy. If restrictions are imposed on such membership, the assignee must elect whether he will or will not accept. Sparhawk v. Yerkes, 12 Sup. Ct. Rep. 104; 142 U. S. 1.

A claim for the proceeds of cotton seized by the United States was held to be property and to pass to the assignee in bankruptcy. Erwin v. U. S., 97 U. S. 392.

The assignee in bankruptcy has sufficient interest in property fraudulently conveyed by the bankrupt to maintain a suit to enjoin such property from being subjected to the lien of a fraudulent judgment. Lehman v. LaForge, 42 Fed. Rep. 493.

The fact that a premium on a life insurance policy is not paid when due, after the commencement of bankruptcy proceedings, cannot affect the rights of the assignee to the policy, as his rights are dependent on the condition existing on the date of the filing of the petition in bankruptcy. In re Sawyer, 2 Hask. 153; 21 Fed. Cas. 556 (1877).

The share of a bankrupt in his father's estate was under the will not payable to him until two years after the time at which he was adjudicated a bankrupt. It was held that by the operation of the bankrupt law his interest vested in the assignee for the benefit of his creditors. Sanford v. Lockland, 2 Dill. 6; 21 Fed. Cas. 358.

The title of property which had been conveyed by a transaction void under the laws of the state remains in the grantee until it is set aside, and a judgment creditor of the grantor acquires no lien which will be respected in bankruptcy. In re Estes et al., 5 Fed. Rep. 60.

Purchaser at assignee's sale takes what title the bankrupt had at the time of sale, and if the bankrupt's title has been strengthened after com-

mencement of bankruptcy proceedings, the purchaser gets the benefit of it. McAlpine v. Tourtelotte, 24 Fed. Rep. 69.

A bankrupt having sworn in his schedules that he owned no real estate, neither he nor his heirs is estopped from a suit to recover lands, deed to which was obtained from the bankrupt by fraud. Land so recovered will inure to the assignee for the benefit of creditors, the surplus, of course, going to the bankrupt and his heirs. Ferguson v. Dent, 24 Fed. Rep. 412.

A wife purchased a lot from money which she received from her father, and paid $600 for it. Three years afterward, the bankrupt built a house upon it, for which he paid $1,500 of his own money, and they occupied the house as a residence. Later, the husband conveyed all his interest to the wife. The court decided that she could not hold the property as against her husband's creditors in bankruptcy. Moyer et al. v. Adams, 2 Fed. Rep. 182.

An assignee in bankruptcy recovered land from a purchaser in good faith of the bankrupt's voluntary grantee. It was held that by reason of his superior diligence he had an equity prior to the lien of a judgment creditor. Wood v. Wright, 4 Fed. Rep. 511.

The court held that an assignee in bankruptcy of a firm could collect from one of the partners proceeds from property which had been assigned to him on a division, and which he had used in paying a loan on his wife's property, the firm being insolvent at the time. Beecher v. Fox, 1 Fed. Rep. 273.

A membership of the New York Stock Exchange was held to be property which passed to the assignee in bankruptcy. In re Ketchum, 1 Fed. Rep. 840.

Held, under the Act of 1841, that the effects of a bankrupt vest in the assignee in bankruptcy, notwithstanding a creditor's bill had been previously filed, a receiver appointed, and a conveyance made by the debtor of his estate to the receiver. Ex parte Waddell, 1 N. Y. Leg. Obs. 53; 28 Fed. Cas. 1312 (1843).

A draft which was not accepted nor charged against the drawer was held not to operate as an assignment of the funds of the latter in the hands of the drawee. Rosenthal v. Mastin Bank et al., 17 Blatchf. 318; 20 Fed. Cas. 1211.

A person who has sold property to the bankrupt which passed into the latter's possession at the time of the filing of the petition cannot recover it by a replevin suit in a state court on the ground that the ownership had not passed by reason of fraud in the transaction. In re Vogel, 7 Blatchf. 18; 28 Fed. Cas. 1239.

Upon the appointment of the assignee, the entire property of the bankrupt and all interest held by him in property under the provisions of the Bankrupt Act of 1867, fourteenth section, are vested in such assignee, in the same manner, and to the same extent, as it was held by the bankrupt at the time the petition was filed against him. In re O'Dowd, 8 N. B. R. 451; 18 Fed. Cas. 593 (1873).

An assignee in bankruptcy has a right to recover property discovered subsequently to the discharge. Mayben v. Raymond, 15 N. B. R. 353; 16 Fed. Cas. 1223.

A voluntary contribution to a bankrupt corporation made for the purpose of enabling it to publish a newspaper does not constitute a debt provable against the estate in bankruptcy. For the same reason, a voluntary contribution promised and not paid constitutes an asset of the estate. In re Oregon Bulletin Printing & Pub. Co., 13 N. B. R. 506; 18 Fed. Cas. 773 (1876).

A court of bankruptcy will compel the bankrupt to turn over personal property alleged to have been given to his wife while he was insolvent, where there was no visible change of possession. In re Pierce et al., 7 Biss. 426; 19 Fed. Cas. 627.

The bankrupt's wife had paid a sum of money for an interest in the firm by which her husband was employed, receiving a fraction of the profits without rendering any services. The court decided, under the circumstances of the case, that the bankrupt was the true owner of the interest in the firm's business. In re Rathbone, 3 Ben. 50; 20 Fed. Cas. 309.

The creditor of the bankrupt has an insurable interest under a policy on the life of the bankrupt taken out to secure an existing debt only to the extent of such debt. If, therefore, a creditor keeps alive such policy after the decree of bankruptcy, by paying premiums thereon, he is entitled on the death of the insured only to the amount of the debt secured; and the excess of the insurance money must be paid to the assignee of the bankrupt. In re Newland, 7 Ben. 63; 18 Fed. Cas. 92.

The father of the bankrupt's wife had bequeathed property to him in trust for the wife, with a provision that upon her death the property should be equally divided between the children she then had, and her husband. She died leaving three children. The court of bankruptcy held, under the laws of Georgia, that the husband should take a fourth interest in fee in the said property. In re Myrick, 3 N. B. R. 153; 17 Fed. Cas. 1130.

The will of the father of a bankrupt's wife bequeathed his property to him for her use, with remainder over to her husband and children on her death, and also contained a provision that the property should not be liable to the payment of the debts of her husband. It was held that the latter limitation applied only during the life of the wife, and not after the property had vested in the bankrupt in fee. Ibid.

By the third section of the Bankrupt Act of 1841, all property and rights of property of every person who shall be adjudged bankrupt shall, by mere operation of law, from the time of such decree be vested in the assignee of the bankrupt. Property acquired by a bankrupt by descent after the filing of his petition to be adjudged a bankrupt, and before the decree, is under this Act vested in the assignee of the bankrupt. Ex parte Newhall, 2 Story, 360; 18 Fed. Cas. 75 (1842).

P., Sr., to defraud his creditors, transferred certain notes and mort-

gages to E., Jr. The latter was adjudged a bankrupt, and his assignee foreclosed the mortgages and received the proceeds. Held, that the creditors of E., Sr., could not recover the money from the assignee. Aiken v. Edrington, 15 N. B. R. 271; 1 Fed. Cas. 238.

A permit to occupy a stand in a market, which had a salable value, and was assignable by the custom of the city, passes to the assignee in bankruptcy as assets of the bankrupt. In re Gallagher et al., 16 Blatchf. 410; 9 Fed. Cas. 1082.

A vendor of real estate to the bankrupt remained in possession under an agreement that he should apply the rents upon the purchase price, which had not been paid in full. Held, that the title passed to the assignee, notwithstanding this arrangement. Hall v. Scovel, 10 N. B. R. 295; 11 Fed. Cas. 253.

The legal title of real estate had stood for ten years in the name of others, with secret trusts for the benefit of the bankrupt. The bankrupt had formerly held the title in his own name, and continued to use the premises all the time in carrying on his business. It was held that the property passed to the assignee in bankruptcy as assets. In re Long, 26 Leg. Int. 349; 15 Fed. Cas. 812.

A son of the bankrupt had given the latter's wife a house of the value of $5,000. Some years before the son had received a loan of the like sum from his father, the bankrupt, to enable him to go into business. Held, that while, under the laws of Illinois, a married woman is entitled to her separate estate, a court of bankruptcy will not permit the use by a bankrupt of his wife, directly or indirectly, to cover up his property. In re Eldred, 3 N. B. R. 256; 8 Fed. Cas. 407.

An assignee in bankruptcy can recover notes transferred by the bankrupt after the filing of the petition from the purchaser, even though he had no actual notice of the proceedings. In re Lake, 3 Biss. 204; 14 Fed. Cas. 944.

The right of an assignee to a chose in action of the bankrupt is not affected by the fact that the bankrupt failed to place it on his schedules. In re Boyd, 2 Hughes, 349; 3 Fed. Cas. 1089.

The assignee was by order of the court substituted for the bankrupt in an action brought by him and his wife to recover a chose in action that belonged to the wife before marriage. A judgment having been recovered, it was held that the assignee could proceed to collect it, and apply the proceeds to the payment of the bankrupt's debts. Ibid.

The bankrupt having conveyed lands to a third person without consideration before the passage of the Bankrupt Act, it was decided that they pass to the assignee. Carr v. Hilton, 1 Curt. 230; 5 Fed. Cas. 134 (1852).

Where the bankrupt paid the entire consideration for lands, and the title was taken in the name of a third person, they belong to the assignee, and he can enforce his rights for the benefit of the creditors though the bankrupt himself would not be heard in a court of equity. Ibid.

Where the bankrupt had purchased property partly with money be-

longing to his wife, and with her consent, held the title in his own name, it was decided that she could not afterward assert her right to the property as to creditors whose claims accrued during the time the property was so held by him. Keating v. Keefer, 5 N. B. R. 132; 14 Fed. Cas. 168.

In a case where the bankrupt had partly performed a contract before bankruptcy and subsequently completed it, it was decided that the compensation should be apportioned between the assignee and the bankrupt. In re Jones et al., 4 N. B. R. 347; 13 Fed. Cas. 934.

An equity of redemption survives in the assignee when he was not made a party to the foreclosure of a mortgage against a bankrupt after adjudication. Barron v. Newberry, 1 Biss. 149; 2 Fed. Cas. 937.

B. & Co. sold and delivered to E. a stock of goods. While in transit they were seized under a writ of attachment by M. Within sixty days after the sale, B. & Co. were adjudged bankrupts. E. brought an action against M. in trover for the value of the goods. The jury found for the defendant, and the court overruled a motion for a new trial on the ground that a plaintiff in trover must prove his title against the world, and that under the circumstances of this case the title was in the assignee in bankruptcy. Eiseman v. Maul, 12 Chi. Leg. News, 112; 8 Fed. Cas. 397.

The bankrupt owned the fee of a street in Chicago, which, in the course of years, was largely extended by accretions from Lake Michigan. Held, that the title to the street passed to his assignee in bankruptcy, and that the accretions became the property of the owner deriving title by mesne conveyances from the assignee. Kinzie v. Winston, 4 N. B. R. 84; 14 Fed. Cas. 649.

It was in proof that the bankrupt had fraudulently paid money into C.'s hands which the latter had used after adjudication in purchasing shares in a company. On a bill filed by the assignee against C., the defendant was ordered to turn the shares over to the assignee and pay the costs of the suit. Hyde v. Cohen et al., 11 N. B. R. 461; 12 Fed. Cas. 1106.

A creditor made an examination of the debtor's stock and found that some of the goods had been secreted. He then induced the debtor to turn over enough goods to satisfy his claim, and gave a receipt in full. Most of the goods turned over had been obtained from another seller. It was held that the assignee could recover from the creditor the value of the goods so turned over. Anon., 1 Fed. Cas. 1017.

An assignee in bankruptcy takes the title of the bankrupt, under a conveyance conditioned upon annual payments to the grantor during life, subject to a lien for the payments due to the grantor at the time of his death. Atwood v. Kittell, 9 Ben. 473; 2 Fed. Cas. 199.

Before the commencement of proceedings the bankrupt had stated that he held several promissory notes. A short time after, a petition was filed, and he was enjoined from disposing of any of his property. Upon the service of the injunction, he swore that he had already sold the notes and spent most of the proceeds. An order was made that he deliver the amount of the notes to the assignee, and, failing to do so, an

attachment should issue against him. In re Kempner, 6 N. B. R. 521; 14 Fed. Cas. 290.

Property embraced in the schedules of a bankrupt will be protected by the court of bankruptcy from the levy of an execution at any time after the petition is filed. In re Mellor et al., 16 Fed. Cas. 1331.

Real estate was sold under a power of sale contained in the mortgage, and the assignee joined, by order of the bankruptcy court. Under the circumstances of the case, it was held that the mortgagee, who was the purchaser at the sale, was entitled to the rents and profits for the period between the sale and the confirmation by the bankruptcy court, as against the assignee. Lathrop v. Nelson et al., 4 Dill. 194; 14 Fed. Cas. 1183.

A vessel is destroyed by a confederate cruiser. The owner makes a voluntary oral gift of the claim for damages to his wife. Afterward he becomes a bankrupt, and, as a result of the Geneva award, damages for the destruction of the vessel are allowed. Held, that the money payable on account of the damages vested in the assignee and no legal or equitable right thereto had passed to the wife. Williamson v. Colcord, 13 N. B. R. 319; 30 Fed. Cas. 9 (1875).

The mortgagee of a chattel mortgage on default and according to the terms of the mortgage took possession of the property. One hour before the sale of the goods an execution was issued against the goods of the mortgagor, and subsequently the mortgagor became bankrupt. Held, that the surplus proceeds of sale belonged to the assignee in bankruptcy and not to the execution creditor, since, according to the laws of New York, there was no interest in the goods in the hands of the mortgagee capable of being levied on. In re Wrisley, 17 N. B. R. 259; 30 Fed. Cas. 717 (1877).

A conveyance of real estate by a debtor to his wife through a third person was held void as to creditors, though the wife did not know of the intent of her husband. It was mentioned as a badge of fraud that the deed was not recorded for eighteen months after execution, and then only on the day before the husband failed in business. Beecher v. Clark, 12 Blatchf. 256; 2 Fed. Cas. 52. The propositions above stated were affirmed by the supreme court of the United States on appeal, though the decree was modified in some minor respects.

A company had agreed to furnish goods to the bankrupt at certain prices, the agreement on his part being to settle by notes at the end of every three months for all goods sold by him during that time, and at the end of the year to settle for all goods remaining on hand. The court of bankruptcy decided that the bankrupt was a purchaser, and not the agent or factor of the company, and that the company could not recover from the assignee the proceeds of goods sold or notes representing such proceeds. In re Linforth et al., 4 Saw. 370; 15 Fed. Cas. 558.

The owner of a hotel sold the furniture, fixtures, etc., to his two sons on an agreement that if they should fail to pay, the property would be reconveyed to them at his request. Over three years afterward, with-

out having paid any part of the purchase price, the sons reconveyed to their father, who took possession. Later he sold the property for a sum considerably in excess of the purchase price due from the sons. The surviving son thereafter went into bankruptcy, and his assignee brought suit against the father to recover the value of the property. It was held that he could recover the excess that he had received on the sale over the sum due on the sale to his sons with interest. Mitchell v. McKibbin, 29 Leg. Int. 412; 17 Fed. Cas. 506.

The bankrupts having transferred certain bills under circumstances constituting a violation of the law, and the bills having been reduced to judgment, the supreme court affirmed an order of the circuit court directing that the judgment be assigned to the trustees in bankruptcy. The court said: "The transfer of these bills as well as the others was void under the bankrupt law, and the title to them passed to the trustee in bankruptcy when appointed. The fact that in the hands of the bankrupt or his assignees the bills may not be good against the oil company does not affect this case. The bills whether good or bad belong to the trustees who have consequently the right to the judgment into which they have been merged." First National Bank v. Cook, 154 U. S. 628.

Interests that do not Pass to Trustee.

No title passes to the assignee in property conveyed by the bankrupt by a prior unrecorded deed, fraud not being shown. Laughlin v. Dock Co., 65 Fed. Rep. 441.

A cause of action for an alleged false representation made to the bankrupt was held not to pass to the assignee. Tufts v. Matthews, 10 Fed. Rep. 609.

A factor sold goods of his principal and received in payment a bond in his own name. Held, that the bond did not pass to the factor's assignee in bankruptcy. Price v. Ralston, 2 Dall. 60.

No title passes to the assignee in property previously conveyed by the bankrupt where there has been no actual or constructive fraud in such conveyance. Mere insolvency, unknown at the time of the conveyance, is not sufficient to invalidate it. Metropolitan Bank v. Rogers, 53 Fed. Rep. 776; 3 C. C. A. 666.

Held, that an adjudication in bankruptcy before the annexation of Texas did not convey to the assignee the title of a house and lot in Galveston. Okey v. Bennett, 11 How. 33.

A lease that cannot be assigned without the consent of the lessor is cancelled by an adjudication in bankruptcy. In re Breck et al., 8 Ben. 93; 4 Fed. Cas. 43.

It is not necessary that a bankrupt should surrender a life insurance policy in favor of his wife, or enter it on his schedule; but payments of premiums by the husband after insolvency are a fraud on his creditors, and the assignee in bankruptcy can recover them from the wife out of the proceeds of the policy. In re Bear et al., 11 N. B. R. 46; 2 Fed. Cas. 1166.

A wife's separate estate stood in the bankrupt's name at the commencement of proceedings. The court of bankruptcy decreed a settlement of the property upon the wife. In re Campbell, 17 N. B. R. 4; 4 Fed. Cas. 1157.

An insurance company had borrowed certain bonds to exhibit to official examiners as evidence of its solvency. A bill in equity by the assignee of the company to recover the bonds was dismissed upon evidence that they had never belonged to the company. Walker v. Reister, 102 U. S. 467.

"Held, that under the provisions of the Bankrupt Law of 1867, a wife's chose in action not reduced to possession by the husband at the time of the bankruptcy did not pass to the assignee, more especially as in this case when the bankrupt at the date of the bankruptcy had not the power of immediate reduction to possession, having only a power, and no vested interest in the property itself." Wickham v. Valle et al., 11 N. B. R. 83; 29 Fed. Cas. 1145.

The bankrupt, as agent for his wife, took a note in his own name for rent of property belonging to her. It was held that this did not pass to the assignee, unless the conveyance to his wife was set aside as fraudulent in an action for that purpose. In re Westervelt, 29 Fed. Cas. 793.

Judge Emmons, reversing the district court, held that the transfer to an assignee in bankruptcy was within the terms of that provision of a policy for fire insurance which declared that the policy could be void in case of any change or transfer of the title to the property insured. Starkweather v. Cleveland Ins. Co., 4 Chi. Leg. News, 175; 22 Fed. Cas. 1093.

Parties had agreed to purchase certain stock of the bankrupt, and paid the purchase price, but he failed before the stock was delivered. Subsequently, he transferred the stock, and the court dismissed a bill by his assignee in bankruptcy to recover the shares. Sparhawk et al. v. Richards et al., 12 N. B. R. 74; 22 Fed. Cas. 868.

"The intimation in some cases that an assignee in bankruptcy would be deemed in possession of chattels and choses in action of the wife of the bankrupt not reduced to possession by him, upon the ground that the assignee is clothed with all the legal powers of the husband, and may under such power demand possession, is not supported by the more modern authorities. The assignee is now limited, in respect to the wife's assets, to the interest of the bankrupt actually had or possessed, and cannot exercise in his behalf an election in that respect." In re Snow et ux., 1 N. Y. Leg. Obs. 264; 22 Fed. Cas. 721 (1842).

The bankrupt had allowed his minor sons to receive the profits of selling confectionery in his store, and they had deposited the proceeds in their own name in a savings bank. Held, that they did not vest in the assignee of the father. Ex parte Tebbets, 5 Law Rep. 503; 23 Fed. Cas. 825 (1842).

The bankrupt held a membership in the Chicago Board of Trade. The court held that, being in the nature of a franchise, license or privilege, it did not pass to his assignee, and could not be treated as a portion of his assets. In re Sutherland, 6 Biss. 526; 23 Fed. Cas. 453.

The interest of a bankrupt as tenant under a lease, whereby rent was required, and wherein the tenant was liable to ouster for nonpayment of rent, does not pass to the assignee in bankruptcy. In re O'Dowd, 8 N. B. R. 451; 18 Fed. Cas. 593 (1873).

Upon the bankruptcy of a factor, his principal may recover from the assignee any goods remaining unsold, or any proceeds of the sale of such goods which the assignees themselves have received. Miller v. Wheeler, 2 Low. 346; 18 Fed. Cas. 497.

The bankrupts, who were manufacturers of engines, secured pay for an engine on a false representation that it had been delivered. Subsequently, they completed such an engine, and marked the purchaser's name upon it. Held, that the purchaser could enforce his ownership of the engine against the assignee in bankruptcy, who was estopped from denying the right of the purchaser. In re Rockford, R. I. & St. L. R. Co., 1 Low. 345; 20 Fed. Cas. 1071.

A will bequeathing the testator's property to trustees for the benefit of his sons, provided that upon the bankruptcy of the *cestui que trust* the interest of his sons should cease and vest in others. On the bankruptcy of a son, one of the beneficiaries, no right to the bequeathed property passed to the bankrupt's assignee. Nichols v. Eaton et al., 3 Cliff. 595; 18 Fed. Cas. 188 (1873).

A party made a loan to the bankrupt and delivered the money to the latter's agent, but it never reached the bankrupt himself. The loan was contracted under circumstances constituting a fraud. It was held that the assignee in bankruptcy could not claim the money, and that it must be returned to the lender. Purviance v. Union Nat. Bank, 8 N. B. R. 447; 20 Fed. Cas. 73.

The assignee took possession of certain goods which had been sold by the bankrupt for a present and adequate consideration before the commencement of proceedings. He was required to return them to the vendee. In re Pusey, 7 N. B. R. 45; 20 Fed. Cas. 76.

A trader had sent scales to the bankrupt which were to be paid for by note after they were set up. They were delivered, but not set up, and the note was not given. The assignee was ordered to return them to the vendor. In re Pusey, 6 N. B. R. 40; 20 Fed. Cas. 75.

A wife out of her separate means paid the premiums on a policy of insurance upon her life payable upon her death to her husband. After the payment of the first premium, her husband became a bankrupt, and before the fourth premium became due the wife died. It was held that the husband was entitled to the proceeds of the policy as against his assignee in bankruptcy. In re Murrin et al., 2 Dill. 120; 17 Fed. Cas. 1062.

Powers of revocation and appointment reserved by a grantor did not pass to the assignee in bankruptcy under the Act of 1867 (sections 5044-5046, R. S.). Jones v. Clifton, 2 Flip. 191; 13 Fed. Cas. 942.

One-half of a vault in a cemetery was held not to pass to the assignee in bankruptcy when the laws of the state forbade its sale on execution. Ex parte General Assignee, 1 N. Y. Leg. Obs. 131; 10 Fed. Cas. 1068.

One who receives a deed to land will hold the fee against the assignee of a bankrupt who, before his bankruptcy, held a bond for the same land from the purchaser's grantor, the conditions of which bond had been broken. In re Gregg, 1 Hask. 173; 10 Fed. Cas. 1186.

A railroad company sold six of twenty county bonds that were in the hands of a bailee, and could not be delivered before the completion of its line to a certain point. It was held that the purchaser could hold them against the assignee in bankruptcy of the company. Hamilton v. Nat. Loan Bank, 3 Dill. 230; 11 Fed. Cas. 362.

Fifty years after the discharge of a bankrupt under the Act of 1800, creditors presented a petition asking for the appointment of new assignees for the purpose of establishing the interest of the estate in lands claimed to have been owned by the bankrupt, and not administered upon in the proceedings. The court held that the petition was barred by the lapse of time. In re Pintard, 19 Fed. Cas. 695.

A trust company had received a fund, the income of which was to be paid to the bankrupt for the support of himself and his wife and children. It was held that as the bankrupt was obliged to apply it to the purposes named, his assignee in bankruptcy did not take it. Durant v. Hospital L. I. Co., 2 Low. 575; 8 Fed. Cas. 114.

A bankrupt had handled the funds and securities of his sister for a number of years, and among other things took up a mortgage with the proceeds of the sale of government bonds belonging to her. It was held that she was entitled to be considered the owner of the mortgage as against his assignee in bankruptcy. Dewey v. Kelton et al., 18 N. B. R. 217; 7 Fed. Cas. 573.

Justice Washington decided that by the most liberal construction of the Law of 1801, a contingent interest of a husband in the estate of his wife under a will by a deceased ancestor of the latter, did not pass to the husband's assignee in bankruptcy. Krumbaar v. Burke et al., 2 Wash. C. C. 406; 14 Fed. Cas. 872 (1809).

Unless there is an express reservation, a consignee of goods on sale can hold notes and accounts from persons to whom he sold parts of them as against the assignee in bankruptcy of the consignor. Ex parte Flannagans, 2 Hughes, 264; 9 Fed. Cas. 247.

Since 1869, a married woman in Illinois may retain her earnings as the agent of her husband in selling goods on commission, where there was a special agreement to that effect between the two. In re Hay, 6 Chi. Leg. News, 256; 11 Fed. Cas. 886.

Jewelry given to a bankrupt's wife before her marriage, and gifts of personal ornaments and attire by her husband, such as were suitable to her circumstances at the time the gifts were made, do not pass to the assignee in bankruptcy. In re Ludlow, 1 N. Y. Leg. Obs. 322; 15 Fed. Cas. 1079 (1843).

In Michigan, the United States district court, distinguishing between a mortgage and a deed of trust to secure a debt, held that the grantee of an assignee in bankruptcy could not maintain an action of ejectment

against the grantee of a deed of trust, as the deed divested the bankrupt of his title, and the interest of the assignee was limited to the surplus. Lyall v. Miller et al., 6 McLean, 482; 15 Fed. Cas. 1124 (1855).

Chattels sold under an agreement that the ownership shall not pass until the price has been paid do not go to the assignee in bankruptcy; but he may pay the balance due the vendor, and take the property as assets. In re Lyon, 7 N. B. R. 182; 15 Fed. Cas. 1180.

The interest of the bankrupt in a policy of insurance is terminated by an adjudication, but the company can consent to continue it by a transfer to the assignee or other officer representing the creditors. In re Carow, 4 N. B. R. 543; 5 Fed. Cas. 101.

Under the terms of a lease which the bankrupt had made, he was to receive a certain proportion of the crops raised on the leased land. The land was sold under an order from the court in bankruptcy. It was held that the bankrupt's interest in the growing crops did not pass to the purchaser under such sale. In re Bledsoe, 12 N. B. R. 402; 3 Fed. Cas. 686.

Under the Act of 1867, property acquired after the filing of the petition, *e. g.*, crops planted thereafter, does not pass to the assignee. In re Barnett, 2 Fed. Cas. 879.

An adjudication in bankruptcy, and the appointment of an assignee, do not vest in the latter the title to property which has been assigned by the bankrupt for the benefit of his creditors until the assignment has been set aside. Belden et al. v. Smith et al., 16 N. B. R. 302; 3 Fed. Cas. 83.

The bankrupt and his wife were the owners of certain real estate in entirety. Between adjudication and discharge, the wife obtained a divorce. Held, that at the time of the adjudication the bankrupt had no interest in the property which passed to the assignee, and that any interest that he gained by the divorce, being subsequent to adjudication, could not be claimed as part of the estate. In re Benson, 8 Biss. 116; 3 Fed. Cas. 236.

One who has purchased or taken an incumbrance on property in good faith after the commencement of proceedings in bankruptcy, though it was conveyed in fraud of creditors, will be protected to the extent of the moneys advanced. Paddock v. Fisk, 10 Fed. Rep. 125.

A customer deposited a check in a bank for collection. Under the usage of the bank, he was not allowed to draw against the proceeds until it had received notice of its collection. Before such notice was received, it had closed its doors. Afterward the check was collected and, proceedings in bankruptcy having been commenced, the proceeds came into the hands of the assignee. The court held that the check never became the property of the bank, and that the depositor was entitled to receive the proceeds from the assignee. In re Havens, 8 Ben. 309; 11 Fed. Cas. 847.

The laws of New York provide that the stockholders of a banking corporation shall be individually liable for its debts to the amount of the stock held by them respectively. The assignee in bankruptcy of such a corporation filed a bill in equity to enforce this liability. A demurrer to the bill was sustained. The court held that such a liability is not assets

of the bankrupt corporation, and that no legal or equitable interest passed to the assignee in bankruptcy. Dutcher v. Marine N. Bank, 12 Blatchf. 435; 8 Fed. Cas. 152.

The defendant had purchased certain real estate from the bankrupt's assignees, appointed some years before under the insolvency law of the state. The consideration was nominal, but the property then had no market value. The value of the property having increased considerably, the assignee in bankruptcy brought this suit to compel the defendant to convey the property to him. The court held that the suit could not be maintained, as the bankrupt had no legal or equitable interest in the property at the commencement of proceedings which passed to the assignee. Goldsmith v. Hapgood, Holmes, 454; 10 Fed. Cas. 568.

A debtor being insolvent assigned his property, giving preferences. The assignment being contested, a receiver was appointed and recovered judgment against the assignee for the assigned property, from which judgment an appeal was taken. Ten years later, and pending the appeal, the debtor was adjudicated a bankrupt. It was held by the district court that the assignee in bankruptcy had no right to the property in litigation, the same having passed either to the original assignee or to the receiver, as might be determined by the state appellate court. Sedgwick v. Meack, 6 Blatchf. 156; 1 N. B. R. 675; 21 Fed. Cas. 984 (1868).

The bankrupt was a member of the stock exchange in New York and Philadelphia. By the by-laws of each, the seats were subject to a lien for debts due to their members. The assignees of the bankrupt took no steps to acquire the seats, and they were appraised as having no value. Ten years after his discharge in bankruptcy, the bankrupt having paid the assessments due the stock exchange, and settled with the members, was reinstated to his membership. Thereafter the assignees in bankruptcy sought to have these memberships declared to be assets of the bankrupt's estate. It was held under the circumstances of the case that this could not be done. Sparhawk v. Yerkes, 142 U. S. 1.

Worthless Property.

An assignee in bankruptcy may refuse to take property of a bankrupt which would be of no benefit to the estate. Kimberling v. Hartly et al., 1 Fed. Rep. 571.

A court of bankruptcy will not assume jurisdiction of the bankrupt s property which is incumbered for more than its worth, when no fraud is charged. McLean v. Rockey et al., 3 McLean, 235; 16 Fed. Cas. 283 (1843).

An assignee in bankruptcy is not obliged to take a patent for an invention belonging to the bankrupt if he regards it as worthless. Where he had neglected for a year to assume the ownership of certain property, his omission was held to be proof of an election not to accept it. Sessions v. Romada, 145 U. S. 29.

"It is well settled that assignees in bankruptcy are not bound to accept property which in their judgment is of an onerous and unprofitable

nature, and would burden instead of benefiting the estate. They can elect whether they will accept or not, after due consideration, and within a reasonable time, while, if their judgment is unwisely exercised, the bankruptcy court is open to compel a different course." Dushane v. Beall, 161 U. S. 513.

It was held to be within the discretion of the assignee to elect whether he will assert his title to property of the bankrupt where it might be only a burden to the estate. His failure to record the assignment in a county in which land of the bankrupt is situated is evidence of his election not to assert the title. A failure on his part to take charge of the land for such a time as would indicate a disposition not to make claim to it works as an estoppel against him from asserting any right after the bankrupt, whose possession has not been disturbed, has sold to an innocent purchaser for value. Taylor v. Irwin, 20 Fed. Rep. 615.

Character of Trustee's Title.

An assignee in bankruptcy takes the property of the bankrupt subject to all the equities that would affect the bankrupt himself existing at the time of his bankruptcy. Mitchell v. Winslow et al., 2 Story, 630; 17 Fed. Cas. 527 (1843).

The assignee in bankruptcy takes the property and rights of property of the bankrupt subject to all the rights and equities of third persons which are attached to it in the hands of the bankrupt. Ex parte Newhall, 2 Story, 360; 18 Fed. Cas. 75 (1842).

An assignee in bankruptcy takes the money and other property in the possession of the bankrupt at the time of the filing of the petition, and the bankrupt cannot, for the purpose of retaining such property in his possession, set up a prior assignment for the benefit of creditors. In re Moses, 1 Fed. Rep. 845.

The assignee in bankruptcy takes the property of the bankrupt as an attaching creditor would take it, that is, subject to all legal claims upon it. He does not take it as a *bona fide* purchaser, whose rights are in many cases superior to those of an ordinary creditor. Safford v. Burges, 16 N. B. R. 402; 21 Fed. Cas. 145 (1877).

The assignee in bankruptcy takes the property of the bankrupt in cases unaffected by fraud subject to all the equities which exist against the same in the hands of the bankrupt. Opinion by Judge Story. Winsor v. McLellan, 2 Story, 492; 30 Fed. Cas. 323 (1843).

The assignees of a bankrupt took his real and personal property subject to all liens, equities and incumbrances except as to attachments or fraudulent transfers made within a short time before the commencement of the proceedings. Yeatman v. Savings Institution, 95 U. S. 764.

Trustees appointed in bankruptcy proceedings take the property of the bankrupt subject to all legal and equitable claims of other persons. Cook v. Tullis, 18 Wall. 332; Hawkins v. Blake, 108 U. S. 422.

The assignee in bankruptcy takes the property of the bankrupt subject

to all the liabilities that would attach to it in the hands of the latter. Fletcher et al. v. Morey, 2 Story, 555; 9 Fed. Cas. 266 (1843).

An assignee in bankruptcy takes his title at the time of the conveyance of the assets to him, and where there had been a subsequent conveyance to a voluntary assignee under a state law, a demand by the assignee in bankruptcy is sufficient without an injunction to restrain him from disposing of the assets. Ostrander v. Meunch, 12 Fed. Rep. 562.

A valid adjudication of bankruptcy against a debtor has the effect to subject him and his property to the operation of the Bankrupt Act, notwithstanding a previous voluntary general assignment for the benefit of creditors; and the assignee in bankruptcy, as against the assignee under the state law, is entitled to the possession and control of the estate. Hobson et al. v. Markson et al., 1 Dill. 421; 12 Fed. Cas. 269.

Judge Hoffman, of the district court of California, decided that an assignee in bankruptcy stands in the position of a judgment creditor, and may redeem the property of the bankrupt sold on execution without discharging a claim of the judgment creditor, who had purchased at the sale, for a deficiency judgment. Lloyd v. Hoo Sue et al., 5 Saw. 74; 15 Fed. Cas. 718.

Sales by Trustees.

When it is sought to sell disputed interests of the bankrupt, there must be an application to the court, after personal notice to the adverse claimants, for an order to sell, and the sale must be public and after public notice. Ex parte Bryan, 2 Hughes, 273; 4 Fed. Cas. 499.

An assignee in bankruptcy on a sale of property can convey no more title than the bankrupt himself has. Hills v. Alden et al., 2 Hask. 299; 12 Fed. Cas. 189.

An assignee need not adjourn a bankrupt sale to give a bidder time to search the title. Ibid.

It was held in Maine that the district court would not confirm sales of real property made by an assignee, but would leave the purchaser to establish his title whenever occasion should arise. In re Alden, 16 N. B. R. 39; 1 Fed. Cas. 327 (1844).

When a court of bankruptcy authorizes a private sale of land by the assignee, the latter will still be held responsible in case of neglect to obtain the best possible price for the property. In re Knott et al., 14 Fed. Cas. 785.

Under the Act of 1867 it was not the practice in the first circuit to confirm sales by assignees "on account of the rights of third parties being liable to be compromised thereby." Case of Donald, 7 Fed. Cas. 889.

A court will not require an assignee to sell property that is incumbered for more than its value. In re Bowie, 1 N. B. R. 628; 3 Fed. Cas. 1067.

Where the liens upon property exceed its value, the court of bankruptcy should not order its sale. In re Ludwigson, 3 Woods, 13; 15 Fed. Cas. 1102.

An assignee in bankruptcy could make a sale of incumbered property without an order of the court under section 20 of the Act of 1867; but

nature, and would burden instead of benefiting the estate. They can elect whether they will accept or not, after due consideration, and within a reasonable time, while, if their judgment is unwisely exercised, the bankruptcy court is open to compel a different course." Dushane v. Beall, 161 U. S. 513.

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Under the Act of 1867 it was not the practice in the first circuit to confirm sales by assignees "on account of the rights of third parties being liable to be compromised thereby." Case of Donald, 7 Fed. Cas. 889.

A court will not require an assignee to sell property that is incumbered for more than its value. In re Bowie, 1 N. B. R. 628; 3 Fed. Cas. 1067.

Where the liens upon property exceed its value, the court of bankruptcy should not order its sale. In re Ludwigson, 3 Woods, 13; 15 Fed. Cas. 1102.

An assignee in bankruptcy could make a sale of incumbered property without an order of the court under section 20 of the Act of 1867; but

when there is a controversy as to the amount of the debt, the assignee should resort to the proper court to ascertain it, and at the same time ask for an order of sale. In re McClellan, 1 N. B. R. 389; 15 Fed. Cas. 1268.

The Act of 1867 (section 5063, R. S.), did not authorize the sale of an entire tract of land of which the bankrupt owned an undivided one-half. In re Ludwigson, 3 Woods, 13; 15 Fed. Cas. 1102.

After a decree of foreclosure had been entered, and the property advertised for sale, proceedings in bankruptcy were commenced, and the proceedings in foreclosure stayed. On a representation that the property would suffer in value unless speedily sold, the court appointed the register special custodian to sell it and retain the proceeds subject to the further order of the court. In re Hanna, 4 Ben. 469; 11 Fed. Cas. 436.

A court of bankruptcy cannot make a summary order for the sale of property claimed to belong to the bankrupt when it is in the possession of a third person who claims to be absolute owner. Knight v. Cheeny, 5 N. B. R. 305; 14 Fed. Cas. 760.

A purchaser at a sale by an assignee in bankruptcy is entitled to rents and profits from the time of the sale, and not from the confirmation only. Hall v. Scovel, 10 N. B. R. 295; 11 Fed. Cas. 253.

A court of bankruptcy will not order the sale of real estate which is incumbered for its full value, and when a suit for foreclosure was in progress before the adjudication. In re Hahnlen, 1 Penn. L. J. 10; 11 Fed. Cas. 156.

Where an assignee makes a sale without obtaining an order of the court, the property is sold subject to all lawful incumbrances. In re Mebane, 3 N. B. R. 347; 16 Fed. Cas. 1304.

Under the Act of 1841 the district court, on the petition of the bankrupt, ordered the sale of his property before adjudication. Justice Story approved of the order, but directed that the creditors must have notice, and that the sale must be made by a commissioner at public auction. In re Vita, 5 Law Rep. 17; 28 Fed. Cas. 1188 (1842).

The plaintiff claimed title under a deed from commissioners of bankruptcy under the Act of 1800. It was held that they must show the authority of the commissioners, and the regularity of their proceedings. In the case cited, the records had been destroyed and it was held that secondary evidence was admissible. Thomas v. Cruttenden, 4 Cranch C. C. 71; 23 Fed. Cas. 936 (1830).

An assignee, being authorized and directed to sell goods of the bankrupt at private sale for the highest obtainable price, was held to have no authority under such order to grant an option to the proposed purchaser which prevented his obtaining the highest available price. In re Ryan, 6 N. B. R. 235; 21 Fed. Cas. 104 (1872).

An order of sale of real estate under the Act of 1841 was sustained, notwithstanding it did not fix the day and hour at which the sale should take place. In re Mott, 6 Fed. Rep. 685.

Under the Act of 1867 the assignee could sell unincumbered assets without an order of the court. In re White et al., 2 Ben. 85; 29 Fed. Cas. 966.

A mortgagee of the bankrupt had sold the mortgaged property before the adjudication, but the purchaser declined to consummate the sale. The court of bankruptcy issued an injunction against a second sale, and held that the property must be sold by the assignee. Whitman v. Butler, 8 N. B. R. 487; 29 Fed. Cas. 1063.

The bankrupt had given a declaration of trust establishing the right of another to one-third of certain real estate. Later he purchased the real estate from his assignee in bankruptcy. Held, that the title which he received from the assignee was subject to the declaration of trust, notwithstanding the proceedings. Roby v. Colehour et al., 146 U. S. 153.

Under the Act of 1841 a sale by the assignee was valid if made pursuant to the general orders of the court. A special order was not necessary. Farmers Co. v. Eno, 35 Fed. Rep. 89.

Held, under the Act of 1841, that where a bankrupt's interest in mortgaged premises was sold, the title of the purchaser related back to the adjudication. Cleveland I. Co. v. Reed, 24 How. 284.

A member of a firm in bankruptcy purchased on his own account from the assignee a claim for money due the firm. It was held that by such purchase he took only the right of the assignee to contest the validity of the transfer of such claim as in violation of the Bankrupt Act. Crawford v. Halsey, 124 U. S. 648.

It was held, under the Act of 1867, that a bankrupt might become a purchaser of property surrendered to his assignee, out of the proceeds of exempt property or means acquired subsequent to the adjudication. Traer v. Clues, 115 U. S. 528.

Where the bankrupt's right of action was barred at the time of a sale by an assignee in bankruptcy, a purchaser at such sale can maintain a suit in equity asserting his title against adverse claims. Gifford v. Helms, 98 U. S. 248.

The provision of the Act of 1867 that mortgaged premises of the bankrupt shall be sold in such manner as the court shall direct (section 5075, R. S.), is for the benefit of creditors, and may be waived by the assignee as their representative. In re Moller et al., 8 Ben. 526; 17 Fed. Cas. 576; s. c., 14 Blatchf. 207; 17 Fed. Cas. 579.

Where a mortgagee was in possession of personal property under a valid mortgage, and it was sold by the assignee in bankruptcy under an order of the court, the mortgagee may be charged with the reasonable expenses of the sale of such property, but not any part of the costs of other proceedings. In re Eldridge, 2 Biss. 362; 8 Fed. Cas. 412.

Creditors who were fully notified of a sale of a part of the bankrupt's estate and fail to protect their interests must bear the consequences; and this is especially true where they receive dividends from the proceeds of the sale without objection and allow the purchaser to dispose of portions of the property. Hills v. Alden et al., 2 Hask. 299; 12 Fed. Cas. 180.

An order was made authorizing the assignees to sell certain property subject to certain specified liens. The sale having been made, the assignees reported that they had sold it subject to all incumbrances, and

thereupon the sale was confirmed by the court. A creditor having a valid judgment, not specified in the order, was allowed to proceed by execution to have his judgment satisfied against the property so sold. In re McGilpon, 3 Biss. 144; 16 Fed. Cas. 107.

Sales Free of Incumbrances.

The court may decree a sale of bankrupt's property free from incumbrances, and protect lienholders out of the proceeds until disputes are determined. In re Mead, 58 Fed. Rep. 312.

It is competent for the district court to order the sale of property surrendered by a bankrupt free from all incumbrances by mortgage, thus transferring the security from the property to the proceeds. In re Barrow, 1 N. B. R. 481; 2 Fed. Cas. 941.

Under the circumstances of the case, a court of bankruptcy ordered the sale of property of the bankrupt divested of all judgments and liens except recorded mortgages. In re National Iron Co., 8 N. B. R. 422; 17 Fed. Cas. 1222.

The court of bankruptcy ordered incumbered property of the bankrupt sold free from the liens, and the sale was made without notice to the lienors. On petition, the court set aside the sale as void as to lien creditors without notice. In re Major, 2 Hughes, 215; 16 Fed. Cas. 526.

Held, that the district court as a court of bankruptcy has power to make a decree for the sale of mortgaged property of the bankrupt, and that the purchaser under such a sale holds the property free of all subsequent incumbrances. Houston v. City Bank, 6 How. 486.

The district court had power, under section 20 of the Act of 1867, to order the sale of incumbered property free from the lien, and might make such an order summarily; but not in such a way as to determine the validity of the lien without an action unless the lienholder consented. It could not authorize a private sale for a sum less than the amount due the creditor, or sell upon credit, without a submission of the proposed terms to the court for approval after notice to the lienholder. In re Curtland, 10 Blatchf. 515; 14 Fed. Cas. 688.

The court ordered the sale of incumbered property of the bankrupt free of the incumbrance. No notice of the sale was given to the holder of the incumbrance, but he was present and had an opportunity to apply for redress. A sufficient sum was retained from the proceeds of the sale to pay his incumbrance. The sale was confirmed by the court. Giveen v. Smith et al., 1 Hask. 358; 10 Fed. Cas. 454.

A court of bankruptcy may order mortgaged personalty to be sold free of the incumbrances, thus transferring the lien to the proceeds, and it may exercise the right, notwithstanding the mortgagee desires, under the authority conferred by the mortgage, to take immediate possession of the goods. It will not be exercised, however, when an immediate sale would affect injuriously the interests of the mortgagee. Foster et al. v. Ames et al., 1 Low. 313; 9 Fed. Cas. 527.

Under the first section of the Act of 1867, it was held that the court could order the sale of incumbered property free from the incumbrances, which thereupon attached to the proceeds of the sale; but such a sale will not be ordered without previous notice to all persons having incumbrances, liens or interests in the property to be sold. Anon., 29 Leg. Int. 20; 1 Fed. Cas. 1011.

Where there are liens by mortgage, judgment or decree on real or personal property of the bankrupt, it was held that the court had power, under section 20 of the Act of 1867, to sell the property in such manner as it chose to direct. In re Columbian Metal Works, 3 N. B. R. 75; 6 Fed. Cas. 177.

The circuit court held on appeal that a sale of the bankrupt's real estate free of incumbrances, subject to the lien of valid judgments, such sale being made on the *ex parte* petition of the assignee, is void, and would be set aside on petition of the lien creditors. In re Rowland, 2 Hughes, 210; 20 Fed. Cas. 1291.

Where the real estate of a bankrupt is covered by liens, their priorities should be determined, after personal notice to the lienors, before the property is sold free from incumbrances by the court of bankruptcy; and where this is not done the lien creditors are not bound by the sale. In re Taliafero, 3 Hughes, 422; 23 Fed. Cas. 674.

By the Act of 1867 it was the intention of congress to confer on the bankruptcy court power to dispose of the incumbered property of the bankrupt as it might deem best for the interest of all concerned. Incumbered property may, therefore, be sold free from the lien, and the lien transferred to the purchase money. In re Salmon, 2 N. B. R. 56; 21 Fed. Cas. 272 (1868).

It is not competent for a court of bankruptcy to order the sale of mortgaged property free from the lien unless the mortgagee is made a party to the proceedings, and a sale under such an order is invalid. Factor I. Co. v. Murphey, 111 U. S. 738; Ray v. Norseworthy, 23 Wall. 128.

Setting Aside Sales.

An assignee in bankruptcy sold a large amount of property, which was bought by a combination of creditors, the other creditors having no notice of the sale. The court set the sale aside. In re Troy Woolen Co., 8 Blatchf. 465; 24 Fed. Cas. 273.

It was held that sales by an assignee are to be treated as judicial sales, and that they should be upheld by the court where they were not attended by circumstances of wrong. In re Ewing, 16 Fed. Rep. 753.

An assignee sold the estate of the bankrupt to his own attorney. The court held that this was sufficient reason for refusing to confirm the sale. Citizens' Bank v. Ober, 1 Woods, 80; 5 Fed. Cas. 733.

Errors in judgment of an assignee as to where a sale of property should take place will not invalidate the sale in the absence of fraud or collusion, and are not of themselves evidence of such fraud. Hills v. Alden et al., 2 Hask. 299; 12 Fed. Cas. 189.

A wife's right to dower having been affirmed in a suit against the assignee, the purchaser at the assignee's sale excepted to the confirmation on the ground that it was said at the sale that the property would be conveyed free from all incumbrances. The exception was sustained. In re Angier, 9 Al. Reg. 190; 1 Fed. Cas. 914.

The court refused to set aside a sale by an assignee in bankruptcy on the ground that the purchaser had agreed before the sale to sell the property to another person at a fixed price on credit. Citizens' Bank v. Ober, 1 Woods, 80; 5 Fed. Cas. 733.

The district court in bankruptcy proceedings having ordered the sale of property that was incumbered beyond its value, the circuit court on review set the sale aside, not for want of jurisdiction in the lower court, but as an improper exercise of its discretion. In re Dillard, 2 Hughes, 191; 7 Fed. Cas. 703.

Where an assignee in bankruptcy has made a conveyance without authority, or which was procured by fraud or imposition, the court of bankruptcy will set it aside in the summary proceeding, while the property is still in the hands of the assignee's grantee. In re Mott et al., 17 Fed. Cas. 901.

The bankruptcy court may refuse to confirm a public sale by the assignee on the ground of mere inadequacy of price. It is not necessary that fraud should be shown, or such gross inadequacy as to indicate fraud. In re O'Fallon, 2 Dill. 548; 18 Fed. Cas. 600 (1873).

Under the circumstances of the case, an application to set aside a sale was granted, notwithstanding the claims of the creditors applying for the order were disputed, and had not been proved. In re Troy Woolen Co., 8 Blatchf. 465; 24 Fed. Cas. 273.

A sale was set aside on the application of creditors who offered to bid a larger sum if another sale were ordered. The court held that they would be bound to make good their pledge. Ibid.

The mere fact that goods were sold at much less than their value, the price being from one-half to two-thirds the market value, was held to be insufficient to invalidate the sale as fraudulent under the thirty-fifth section of the Act of 1867. Sedgwick v. Lynch, 5 Ben. 489; 8 N. B. R. 289; 21 Fed. Cas. 981 (1872).

Where the purchaser was innocently misled by the published notice of a sale in bankruptcy, the court in the exercise of its equity jurisdiction set the sale aside. Searcy v. McChord, 1 Fed. Rep. 261.

Under the circumstances of the case the court set aside a private sale of a bankrupt's property made in pursuance of the order of the court, notwithstanding the purchaser had received a deed and conveyed the title to his father. In re Stevenson et al., 6 Fed. Rep. 710.

Held, that a district court, sitting in bankruptcy in the year 1881, had power by summary order to set aside deeds given by an assignee in bankruptcy under the Act of 1841 when the same were irregularly executed and without due authority. In re Hyde, 6 Fed. Rep. 587.

Before the commencement of proceedings in involuntary bankruptcy,

the debtor promised to pay the petitioning creditor in full. It was held that this did not invalidate the sale of the bankrupt's property in pursuance of the proceedings so instituted. Wallace v. Loomis, 97 U. S. 146.

Without proof of actual fraud, a private sale by an assignee under an order of the court will be set aside upon a showing that it was worth much more than the price at which it was sold. In re Palmer, 13 Fed. Rep. 870.

The assignees in bankruptcy sold the real estate in a lump when it should have been sold in separate parcels. The sale was set aside after confirmation, but before delivery of the deed. The court held that purchasers in good faith should be liberally indemnified for damages, costs and expenses. In re Lloyd, 11 Fed. Rep. 586.

The court ordered a stock of goods to be appraised and sold by the marshal on the ground that they were liable to depreciation. They were purchased by one of the bankrupts on account of a friend at the exact value placed upon them by the appraisers. The court set the sale aside without proof of the inadequacy of price, or fraud in the transaction. March v. Heaton et al., 1 Low. 278; 16 Fed. Cas. 700.

Miscellaneous.

Until an assignee is appointed and the assignment made, the title to the bankrupt's property remains in the bankrupt. Sedgwick v. Grinnell, 9 Ben. 420; 21 Fed. Cas. 978 (1878).

Where an assignee recovered a fund for the benefit of creditors, it was held that it must be distributed among them generally, and not given to one. White v. Jones, 6 N. B. R. 175; 29 Fed. Cas. 1020.

A chattel mortgage, valid when the proceedings in bankruptcy were commenced, is not invalidated in the hands of the assignee because it was not renewed as required by the laws of the state. Carlisle v. Davis et al., 9 Ben. 18; 5 Fed. Cas. 75.

It is competent for an assignee in bankruptcy, as representative of the creditor, to sue where the bankrupt himself could not, to set aside any transaction which, under the general law, is partly or wholly void as against creditors. Mitchell v. McKibbin, 29 Leg. Int. 412; 17 Fed. Cas. 506.

A judgment against a debtor whereby a creditor is given an unlawful preference is not valid in bankruptcy, but only voidable. Sale under execution on such judgment, therefore, vests a valid title to the property sold in a *bona fide* purchaser for value without notice. Zahn v. Fry, 9 N. B. R. 546; 30 Fed. Cas. 904 (1874).

The bankrupt had made an assignment which was void under section 35 of the Act of 1867. The attorney for the bankrupt was also attorney for the assignee and for one of the creditors, and made payments to them out of the proceeds of the assigned property. The assignee, the creditor, and the attorney were ordered to account for such property to the assignee in bankruptcy. In re Meyer, 2 N. B. R. 422; 17 Fed. Cas. 244.

In this case the supreme court sustained an assignment by one partner of the property of the firm, in the name of the firm. Harrison v. Sterry, 5 Cranch, 289.

The provision in the Act of 1841 concerning transactions in good faith, entered into more than two months prior to the commencement of proceedings in bankruptcy, was held to protect only the party dealing with the bankrupt, and not the bankrupt himself. Gassett et al. v. Morse et al., 21 Vt. 627; 10 Fed. Cas. 79 (1843).

An assignee cannot be bound by a decree in proceedings to which he was not a party. Atkinson v. Farmers' Bank, Crabbe, 529; 2 Fed. Cas. 100 (1844).

In the case of a voluntary bankrupt, his rights to the disposition of his property cease with the filing of his petition. In the case of an involuntary bankrupt, they cease with the adjudication. In re Dillard, 2 Hughes, 191; 7 Fed. Cas. 703.

A mortgagee of property belonging to the estate of a bankrupt, if he fails to intercept the rent before the foreclosure, cannot have the rent applied upon his claim specifically on finding the property insufficient to discharge his indebtedness. As a general rule, where the assignee in bankruptcy receives the rent of mortgaged property, it must be distributed among the general creditors. Foster v. Rhodes, 10 N. B. R. 523; 9 Fed. Cas. 572.

Payments made in bad faith to a debtor after a petition in bankruptcy has been filed are void; and the court (Judges Dillon and Treat) citing Mays v. National Bank (64 Pa. St. 74) left the question open whether all payments made under such circumstances are to be held void if the debtor is subsequently declared bankrupt. Babbitt v. Burgess, 2 Dill. 169; 2 Fed. Cas. 280.

The laws of North Carolina require that a deed should be proved before a clerk of the superior court before it can be recorded. It was held that this would not authorize the clerk to refuse to record a deed of assignment executed under the bankrupt law upon a certificate of the clerk of the United States district court. In re Neale, 3 N. B. R. 177; 17 Fed. Cas. 1264.

The bankrupt was a retail grocer and continued to sell goods after filing his voluntary petition. The court characterized his conduct as "utterly unlawful." In re Pryor, 4 Biss. 262; 20 Fed. Cas. 28.

A third person who brings a suit on notes belonging to the bankrupt is to be treated as a trustee of the bankrupt as to the proceeds. In re Perley, 4 N. Y. Leg. Obs. 254; 19 Fed. Cas. 255.

The bankrupts gave a mortgage to secure a party who had become bound with them to pay certain debts. The court of bankruptcy decided that this mortgage inured to the benefit of the creditors to whom the mortgagee was bound, and that it could enforce the trust so created; and the mortgagee having assigned the mortgage to a party with notice of the facts, it was further held that the latter took the property subject to such trust. In re Pierce et al., 2 Low. 343; 19 Fed. Cas. 629.

A suit in equity is not the proper proceeding by which an assignee

should seek to obtain possession of property belonging to the bankrupt. The proper remedy is by replevin. In re Oregon Iron Works, 4 Saw. 169; 18 Fed. Cas. 791.

A member of a firm purchased clothing for his private use, and paid for the same out of the firm property, without the knowledge of his co-partners. Held, that the assignee in bankruptcy could recover the property turned over, and that a bill in equity was the proper proceeding as questions of fraud, trust and partnership were involved. Taylor v. Rash et al., 5 N. B. R. 390; 23 Fed. Cas. 789.

The assignee asked for a summary order upon the bankrupt to deliver to him a policy of life insurance on the endowment plan. It was shown that a short time before the commencement of proceedings the bankrupt had assigned the policy to his son, a minor. It was held that it could only be recovered by an action at law or suit in equity, to which the son must be made a party defendant. In re Stevens, 23 Fed. Cas. 1.

After a petition in bankruptcy was filed, but before adjudication, a suit is brought in a state court to foreclose a mortgage. Before an assignee is appointed, the mortgage is foreclosed and the property sold. Afterward the assignee files a bill to redeem the property. Held, that the right to redeem was cut off by the foreclosure. Sedgwick v. Grinnell, 9 Ben. 429; 21 Fed. Cas. 978 (1878).

A holder of stock in a corporation is liable to creditors for the amount remaining unpaid, notwithstanding he was assured by the officers of the company when he bought the shares that they were full-paid. Myers v. Seeley et al., 10 N. B. R. 411; 17 Fed. Cas. 1118.

The bankrupt fled from the jurisdiction taking with him a certificate of stock in a corporation. His assignee demanded the issuance of a new certificate, and tendered indemnity. The corporation refused. Held, that the right of the assignee to a transfer and new certificate could be enforced by a bill in equity against the corporation. Wilson v. Atlantic & St. L. R. Co., 2 Fed. Rep. 459.

A register has the right to assign and convey the estate, real and personal, of the bankrupt notwithstanding that the title to the property is in dispute, if there be no one before the register opposing the execution of said assignment. In re Wylie, 2 N. B. R. 137; 30 Fed. Cas. 731 (1868).

Where the purchaser of a patent commences an action for an alleged infringement, the defendant cannot set up the right of an assignee in bankruptcy to the patent in defense to such action. Sessions v. Romada, 145 U. S. 29.

In a case where the assignee in bankruptcy had proceeded by a bill in equity against the bankrupt and another person, alleging that the bankrupt had sold his property and invested the proceeds in a business carried on in the name of the other defendant, the plaintiff having failed to prove the latter allegation, the court held that the bill must be dismissed without prejudice to an action at law against the bankrupt. Cramer v. Cohns, 119 U. S. 355.

An assignee in bankruptcy may recover possession of land withheld by

the bankrupt by a summary petition, and the children and wife of his bankrupt having a reversion are not necessary parties. In re McKenna, 9 Fed. Rep. 27.

The presumption that the sale by a retail merchant of his whole stock is fraudulent cannot be overcome by evidence that the vendee did not know of the insolvency of the vendor, and that he paid the full value of the property. It is, however, sufficient for the vendee to show that he sought information as to the pecuniary condition of the vendor; also that the vendor intended to use the purchase price in the payment of his debts. Norton v. Billings et al., 4 Fed. Rep. 623.

The bankrupt had made a contract to buy a certain number of logs at a fixed price, and advanced $1,000 on the contract. Later, he became embarrassed, and was unable to pay the balance of the purchase price when the logs were tendered. Soon after he was adjudged a bankrupt, and the assignee brought suit against the party to whom the advance had been made to recover it. It was held that he could not recover, as the contract had been terminated solely by the default of the bankrupt. Kane v. Jenkinson, 10 N. B. R. 316; 14 N. B. R. 121.

[See notes to §§ 47, 60 and 67.]

THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

§ 71. (a.) This Act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

(b.) Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.

Referring to the Act of 1841, the court held that the date of its passage meant the date of its approval. In re Tebbetts, 5 Law Rep. 259; 23 Fed. Cas. 826 (1842).

Bankruptcy Act and Insolvency Laws of States.

State and national bankrupt laws discussed in Adams v. Story, 1 Fed. Cas. 141.

The authority of congress to pass uniform laws on the subject of bankruptcy does not prevent the states from legislating on that subject if the power is not exercised by congress, or if the state law did not conflict with laws that congress might pass. Ogden v. Saunders, 12 Wheat. 213; Boyle v. Zachary, 6 Pet. 348; Sturges v. Crowninshield, 4 Wheat. 122.

The passage of a Bankrupt Act by congress suspended the operation of the insolvent laws of states so far as they covered the same subject-matter. In re Reynolds, 9 N. B. R. 50; 20 Fed. Cas. 612.

It was held that the insolvency statute of a state which was suspended by a national Bankrupt Act became operative when the latter was repealed. Tua v. Carriere, 117 U. S. 201.

Judge Story held that the Bankrupt Act of 1841, when it went into operation, suspended the action upon future cases arising under the insolvent laws of the state when the debtors were within the purview of the national act. Ex parte Eames, 2 Story, 322; 8 Fed. Cas. 236.

After the Act of 1841 went into operation, a creditor filed a petition under the insolvent law of Massachusetts, and an assignee was appointed. Later, he commenced proceedings under the law of the United States. Judge Story directed the district court to issue an injunction against the assignee under the state laws, and restrain him from meddling with the property of the debtor. Ibid.

A certificate of discharge under the insolvency laws of a state does not bar an action by a citizen of another state in the United States courts, or in the state courts of any other state. Ogden v. Saunders, 12 Wheat. 213.

A state law discharging both the debtor and such property as he may subsequently acquire was held not to impair the obligation of contracts so far as concerns debts contracted after the law passed. Ibid.

A case pending under the insolvent laws of a state when the Act of 1841 went into effect was not invalidated thereby, and the parties were entitled to proceed in conformity with that law. In re Holmes, 1 N. Y. Leg. Obs. 211; 12 Fed. Cas. 401.

Where, previous to the commencement of proceedings in bankruptcy, a receiver has been appointed for an insolvent corporation under the laws of the state, he will be recognized as the representative of such corporation in bankruptcy. In re Rep. Ins. Co., 8 N. B. R. 197; 20 Fed. Cas. 548.

Previous to the commencement of proceedings, the debtor had made an assignment for the benefit of creditors, which was held to be an act of bankruptcy. The court issued an injunction against the assignee under the state law restraining him from interfering with the debtor's property before adjudication. In re Skoll, 16 N. B. R. 175; 22 Fed. Cas. 304.

The district court for the district of Maine held that proceedings under a state insolvency law were in fraud of the Bankrupt Act of 1867, and that the court in bankruptcy cannot allow a party the expenses incurred by him in his attempt to defeat the provisions and operations of the Bankrupt Act. It follows that the assignee under the state law, in turning over the property to the assignee subsequently appointed in bankruptcy, could not make any deduction for his own services. In re Stubbs, 4 N. B. R. 376; 23 Fed. Cas. 274.

bankruptcy, might, in the exercise of a lawful jurisdiction, restrain, by injunction, the sale of property under an execution issued from a state court before the commencement of proceedings in bankruptcy. In the course of the opinion the court said:

"Looking at the first section of the Bankrupt Act, it is difficult to imagine how a more unrestricted jurisdiction over matters in bankruptcy could have been granted. All the assets and all the parties in interest are to be brought before the court, priorities adjusted, liens ascertained and liquidated, and the different funds and assets marshaled and distributed. The grant of these powers carries with it the right to employ such process, mode of procedure, and remedies as are indispensable to make the grant effectual. In this case the real estate levied on is assets, and power to collect the assets is given. But the power is of no avail in this proceeding, unless the court can preserve the assets until the question of bankruptcy is determined."

The same question was again presented in the same court in the case of In re Mallory, and an elaborate opinion was prepared by the district judge in support of the views expressed by him in the Lady Bryan Min. Co. Case. In this case an appeal was taken to the circuit court, Justice Field presiding, and was there affirmed. In re Mallory, 1 Sawy. 88, 98; Fed. Cas. No. 8,991. With reference to the jurisdiction of the district court in bankruptcy proceedings, Judge Giles, In re Bowie, Fed. Cas. No. 1,728, said:

"This court has, by virtue of the first section of the Bankrupt Act of 1867 (14 Stat. 517) full and adequate jurisdiction over all matters relating to the settlement of the bankrupt estate, either at law or in equity, by way of petition or bill; and that whenever a case is presented which shows that the relief sought by the petition is absolutely necessary to protect the interest of the general creditors, and to save from sacrifice the estate of the bankrupt, such relief will be granted."

The Act of 1867 provided:

"§ 50. And be it further enacted, that this Act shall commence and take effect as to the appointment of the officers created hereby, and the promulgation of rules and general orders from and after the date of its approval; provided, that no petition or other proceeding under this Act shall be filed, received, or commenced before the first day of June, anno Domini, eighteen hundred and sixty-seven."

In Bank v. Campbell, 14 Wall. 87-94, the court said:

"We are of opinion that the proviso to the fifteenth section of the Bankrupt Act, which declares that no petition or other proceeding under it shall be commenced before the 1st day of June, 1867, is limited in its effect to such commencement, and that any act done after its approval, March 2, 1867, in fraud of the purpose of the statute, was within its prohibitions."

The jurisdiction of the district court to issue an injunction in such cases, as well as in a case like the present, grows out of the administration of the law, which gives to courts of bankruptcy, under certain cir-

cumstances, authority to take such steps and exercise such power as may be necessary in order to protect the rights of all the creditors. Other cases might be cited where similar powers have been exercised by the bankruptcy courts, outside of the regular order prescribed by the statute, where the urgencies and special circumstances of the case seemed to demand that such a course should be pursued in order to protect the rights given by the statute.

The statute of 1898 declares that acts of bankruptcy by a persons shall consist, among other things, of his having "suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference." It is, therefore, unnecessary upon this motion to discuss the question as to the sufficiency or effect of certain allegations in respondent's answer. It is enough to say that the levy made upon the property, and the issuance of an execution upon the judgment, etc., might, if the sale of the property is unrestrained, result in giving preference to the Donohoe-Kelley Banking Company over the other creditors of the Francis-Valentine Company. This is, of itself, sufficient to authorize the court to issue an injunction to preserve the property until such time as the rights of all the parties may be heard and determined in the bankruptcy court. It will be for the court in such proceedings to determine whether or not, upon the facts which may be presented, the Francis-Valentine Company should be adjudged a bankrupt, and, if so, whether or not the attachment lien of the Donohoe-Kelley Banking Company is a valid lien upon the property of the bankrupt. Moreover, no answer has been filed by the Francis-Valentine Company, the alleged insolvent, and one of the respondents in this suit. As is said in 2 High Inj., § 1532:

"Courts of equity are usually more strict in requiring a positive denial from all the defendants before dissolving an injunction granted on the ground of fraud than in ordinary cases. And, where the bill implicates two defendants in the same charge of fraudulent conduct, the court will require the answer of both defendants before granting a motion to dissolve." Price v. Clevenger, 3 N. J. Eq. 207.

The contention of respondents' counsel that this court cannot exercise any jurisdiction in the premises, unless the bankruptcy proceedings are pending in the court, cannot be sustained. An examination of the authorities cited clearly shows that the cases where such language was used have no application to the case at bar. Take In re Richardson, 2 Ben. 517; Fed. Cas. No. 11,774, for example. There bankruptcy proceedings had been commenced and were pending in Louisiana, where the petitioners resided. They brought suit in New York in the district court, for an injunction to stay proceedings in a suit of the state court of New York until the "close of the bankruptcy proceedings in Louisiana;" and the court properly held that it had no jurisdiction, because no such power was conferred on any district court, except that one "in which the bankrupt proceedings were pending." Here all parties are residents of

this district, and the bankruptcy proceedings can only be commenced and prosecuted in this court. This is not a creditor's suit, and hence does not come within the rule announced in the authorities cited by respondents' counsel, that a creditor at large, before judgment, is not entitled to the interference of the court by injunction to prevent the debtor from disposing of his property in fraud of such creditors.

It is not necessary to review at length the authorities which hold that the assignee or trustee in the bankruptcy proceedings is authorized to bring and maintain suits concerning the rights of property belonging to the debtor. It is enough to say that no trustee had been appointed, or can be appointed, until after the proceedings in bankruptcy have been commenced. But all the authorities which discuss this question are to the effect, as stated in Bump Bankr. (10th ed.) 229, that before the appointment of an assignee (or trustee), proceedings for an injunction to protect the property of the bankrupt may be instituted by the bankrupt or the petitioning creditor. After an assignee or trustee has been appointed, he is the only person who could institute such proceedings on behalf of the bankrupt estate. Whenever the proceedings sought to be enjoined are prosecuted for the purpose of enforcing a valid lien, and were instituted before the commencement of proceedings in bankruptcy, the courts, in granting or refusing an injunction, are governed by the same principles that regulate their action in the liquidation of liens, and will only interfere when it clearly appears that such interference will benefit the creditors generally. The motion to dissolve is denied. Blake et al. v. Francis-Valentine Co. et al., 89 Fed. Rep. 691.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

I.

DOCKET.

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

II.

FILING OF PAPERS.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

III.

PROCESS.

All process, summons and subpœnas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

IV.

CONDUCT OF PROCEEDINGS.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counsellor authorized to practice in the circuit or district court. The name of the attorney or counsellor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

V.

FRAME OF PETITIONS.

All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

VI.

PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicil, and the petition may

be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

VII.

PRIORITY OF PETITIONS.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

VIII.

PROCEEDINGS IN PARTNERSHIP CASES.

Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defences which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

IX.

SCHEDULE IN INVOLUNTARY BANKRUPTCY.

In all cases of involuntary bankruptcy in which the bankrupt is absent or can not be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

X.

INDEMNITY FOR EXPENSES.

Before incurring any expense in publishing or mailing notices, or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

XI.

AMENDMENTS.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

XII.

DUTIES OF REFEREE.

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States, or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

XIII.

APPOINTMENT AND REMOVAL OF TRUSTEE.

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

XIV.

NO OFFICIAL OR GENERAL TRUSTEE.

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

XV.

TRUSTEE NOT APPOINTED IN CERTAIN CASES.

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

XVI.

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

XVII.

DUTIES OF TRUSTEE.

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make

an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

XVIII.

SALE OF PROPERTY.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately. the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

XIX.

ACCOUNTS OF MARSHAL.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

XX.

PAPERS FILED AFTER REFERENCE.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

XXI.

PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such

claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish *pro tanto* the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

XXII.

TAKING OF TESTIMONY.

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

XXIII.

ORDERS OF REFEREE.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

XXIV.

TRANSMISSION OF PROVED CLAIMS TO CLERK.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

XXV.

SPECIAL MEETING OF CREDITORS.

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

XXVI.

ACCOUNTS BY REFEREE.

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month.

XXVII.

REVIEW BY JUDGE.

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

XXVIII.

REDEMPTION OF PROPERTY AND COMPOUNDING OF CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

XXIX.

PAYMENT OF MONEYS DEPOSITED.

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

XXX.

IMPRISONED DEBTOR.

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon *habeas corpus*, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any mat-

ter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus* to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

XXXI.

PETITION FOR DISCHARGE.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

XXXII.

OPPOSITION TO DISCHARGE OR COMPOSITION.

A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

XXXIII.

ARBITRATION.

Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

XXXIV.

COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

XXXV.

COMPENSATION OF CLERKS, REFEREES AND TRUSTEES.

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed.

XXXVI.

APPEALS.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

XXXVII.

GENERAL PROVISIONS.

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

XXXVIII.

FORMS.

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

FORMS IN BANKRUPTCY.

[N. B.—Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken. Bankrupt Act of 1898, chap. 4, § 20.]

FORM NO. 1.

Debtor's Petition.

To the Honorable ....,
Judge of the District of the United States
for the ..... District of .....:

The petition of ...., of ....., in the county of ....., and district and State of ....., ... [*State occupation*], respectfully represents:

That he has had his principal place of business [*or* has resided, *or* has had his domicil] for the greater portion of six months next immediately preceding the filing of this petition at ....., within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

....

...., *Attorney.*

United States of America, District of ....., ss:

I, ..., the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

...., *Petitioner.*

Subscribed and sworn to before me this .. day of ....., A. D. 18...

....
....
(*Official Character.*)

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.	Amount. $	Amount. c.
(1.) Taxes and debts due and owing to the United States.							
(2.) Taxes due and owing to the State of —, or to any county, district, or municipality thereof.							
(3.) Wages due workmen, clerks, or servants to an amount not exceeding $300 each, earned within three months before filing the petition.							
(4.) Other debts having priority by law.							
					Total		

...., *Petitioner.*

SCHEDULE A. (2)

Creditors holding securities.

[N. B. – Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	Description of securities.	When and where debts were contracted.	Value of securities.		Amount of debts.	
					$	c.	$	c.
				Total				

...., *Petitioner.*

SCHEDULE A. (3)

Creditors whose claims are unsecured.

[N. B.— When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount.	
					$	c.
				Total		

...., *Petitioner.*

SCHEDULE A. (4)

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders, as far as known.	Residence (if unknown, that fact must be stated).	Place where contracted.	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount.	
					$	c.
				Total		

...., *Petitioner.*

SCHEDULE A. (5)

Accommodation paper.

[N. B.— The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated).	Names and residence of persons accommodated.	Place where contracted.	Whether liability was contracted as partner or joint contractor, or with any other person, and, if so, with whom.	Amount. $	Amount. c
					Total		

...., *Petitioner.*

OATH TO SCHEDULE A.

United States of America, District of ——— ss.;

On this ... day of ....., A. D. 18.., before me personally came ...., the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this .... day of ....., A. D. 18...

....,
[*Official character.*]

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT

SCHEDULE B. (1)

Real estate.

Location and description of all real estate owned by debtor, or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value.	
			$	c.
		Total.....		

...., *Petitioner.*

SCHEDULE B. (2)

Personal property

		$	c.
a.— Cash on hand			
b.— Bills of exchange, promissory notes, or securities of any description (each to be set out separately)			
c.— Stock in trade in — business of —— ——, at ——, of the value of ——			
d.— Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.			
e.— Books, prints and pictures, viz.			
f.— Horses, cows, sheep, and other animals (with number of each), viz.			
g.— Carriages and other vehicles, viz.			
h.— Farming stock and implements of husbandry, viz.			
i.— Shipping, and shares in vessels, viz			
k.— Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.			
l.— Patents, copyrights, and trade-marks, viz			
m.— Goods or personal property of any other description, with the place where each is situated, viz.			
	Total		

...., *Petitioner.*

SCHEDULE B. (3)

Choses in action.

	Dollars.	Cents.
a.— Debts due petitioner on open account.....		
b.— Stocks in incorporated companies, interest in joint-stock companies, and negotiable bonds.....		
c.— Policies of insurance.....		
d.— Unliquidated claims of every nature, with their estimated value.....		
e.— Deposits of money in banking institutions and elsewhere.....		
Total.....		

.... *Petitioner.*

SCHEDULE B. (4)

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Supposed value of my interest.	
		$	c.
Interest in land.....			
Personal property.....			
Property in money, stock, shares, bonds, annuities, etc.	Total.....		
Rights and powers, legacies and bequests.....		Amount realized from proceeds of property conveyed.	
Property heretofore conveyed for benefit of creditors.			
What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor		$	c.
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy	Total.....		

...., *Petitioner.*

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

		Valuation.	
		$	c
Military uniform, arms and equipments.....			
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.....			
	Total.....		

...., *Petitioner.*

SCHEDULE B. (6)

BOOKS, PAPERS, DEEDS, AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.	
Deeds.	
Papers.	

...., *Petitioner.*

OATH TO SCHEDULE B.

United States of America, District of ....., ss:

On this .. day of ....., A. D. 18.., before me personally came ...., the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

....,

....,

[*Official Character.*]

SUMMARY OF DEBTS AND ASSETS.

[From the statements of the bankrupt in Schedules A and B.]

Schedule A....	1 (1)	Taxes and debts due United States.			
" ".....	1 (2)	Taxes due States, counties, districts and municipalities			
" ".....	1 (3)	Wages.			
" ".....	1 (4)	Other debts preferred by law			
Schedule A ...	2	Secured claims			
Schedule A....	3	Unsecured claims			
Schedule A....	4	Notes and bills which ought to be paid by other parties thereto			
Schedule A....	5	Accommodation paper			
		Schedule A, total			
Schedule B....	1	Real estate			
Schedule B....	2-a	Cash on hand			
" ".....	2-b	Bills, promissory notes, and securities			
" ".....	2-c	Stock in trade			
" ".....	2-d	Household goods, etc.			
" ".....	2-e	Books, prints, and pictures			
" ".....	2-f	Horses, cows, and other animals			
" ".....	2-g	Carriages and other vehicles			
" " ..	2-h	Farming stock and implements			
" ".....	2-i	Shipping and shares in vessels			
" ".....	2-k	Machinery, tools, etc			
" ".....	2-l	Patents, copyrights and trade-marks			
" ".....	2-m	Other personal property			
Schedule B....	3-a	Debts due on open accounts			
" ".....	3-b	Stocks, negotiable bonds, etc.			
" ".....	3-c	Policies of insurance			
" "...	3-d	Unliquidated claims			
" ".....	3-e	Deposits of money in banks and elsewhere			
Schedule B....	4	Property in reversion, remainder, trust, etc			
Schedule B....	5	Property claimed to be excepted			
Schedule B....	6	Books, deeds, and papers			
		Schedule B, total			

FORM NO. 2.

Partnership Petition.

To the Honorable ....,

Judge of the District Court of the United States

for the ..... District of .....:

The petition of .... respectfully represents:

That your petitioners and .... have been partners under the firm name of ...., having their principal place of business at ....., in the county of ....., and district and State of ....., for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by .. oath , contains a full and true statement of all the debts of said partners, and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by .... oath, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said .... further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said .... further states that the schedule hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said .... further states that the schedule hereto annexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said .... further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that the said firm may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

....
....
....
Petitioners.

.... *Attorney*.

...., the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

....,
....,
....,
Petitioners.

Subscribed and sworn to before me, this ..... day of ....., A. D., 18..

....,
....,
[*Official Character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

FORM NO. 3.

Creditors' Petition.

To the Honorable ...., judge of the District Court of the United States for the ..... district of .....:

The petition of ...., of ....., and ...., of ....., and ...., of ....., respectfully shows:

That ...., of ....., has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business, [*or* resided, or had his domicile] at ....., in the county of ..... and State and district aforesaid, and owes debts to the amount of $1,000.

That your petitioners are creditors of said ...., having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of $500. That the nature and amount of your petitioners' claims are as follows:

.....
.....

And your petitioners further represent that said .... is insolvent, and that within four months next preceding the date of this petition the said .... committed an act of bankruptcy, in that he did heretofore, to-wit, on the ..... day of .....
.....

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon ...., as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

....,
....,
....,
Petitioners.

...., *Attorney*.

United States of America, ... District of ....., ss:

...., ..., ..., being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, ..., this .... day of ....., 189...

....,

....

[*Official Character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

FORM NO. 4.

Order to Show Cause Upon Creditors' Petition.

In the District Court of the United States for the .... District of .....

IN THE MATTER OF	*In Bankruptcy.*

Upon consideration of the petition of .... that .... be declared a bankrupt, it is ordered that the said .... do appear at this court, as a court of bankruptcy, to be holden at ....., in the district aforesaid, on the .... day of ....., at .. o'clock in the ..... noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a writ of subpœna, be served on said ...., by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

Witness the Honorable ...., judge of the said court, and the seal thereof at ....., in said district, on the .... day of ....., A. D. 18...

....

[SEAL OF THE COURT.] *Clerk.*

FORM NO. 5.

Subpœna to Alleged Bankrupt.

United States of America, ... District of .....

To ...., in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the ..... district of ....., as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at ....., in said district, on the ..... day of ....., A. D. 18.., ... to answer to a petition

filed by .... in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable ...., judge of said court, and the seal thereof, at ....., this ..... day of ....., A. D. 18..

....,
Clerk.

[SEAL OF THE COURT.]

FORM NO. 6.

Denial of Bankruptcy.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18..

And now the said .... appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent, and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court [*or*, he demands that the same may be inquired of by a jury].

....

Subscribed and sworn to before me, this .... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 7.

Order for Jury Trial.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF	*In Bankruptcy.*

At ....., in said district, on the .... day of ....., 18...

Upon the demand in writing filed by ...., alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

[SEAL OF THE COURT.]

....,
Clerk.

FORM NO. 8.

Special Warrant to Marshal.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF	*In Bankruptcy.*

To the marshal of said district or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the .... day of ....., A. D. 18.., filed against ...., of the county of ..... and State of ....., in said district, and said petition is still pending; and whereas it satisfactorily appears that said ..... has committed an act of bankruptcy [*or* has neglected *or* is neglecting, *or* is about to so neglect his property that it has thereby deteriorated *or* is thereby deteriorating, *or* is about thereby to deteriorate in value], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said ...., and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the Honorable ...., judge of the said court, and the seal thereof, at ....., in said district, on the .... of ....., A. D. 18...

[SEAL OF THE COURT.] ....,
Clerk.

Return by Marshal Thereon.

By virtue of the within warrant, I have taken possession of the estate of the within-named ...., and of all his deeds, books of account, and papers which have come to my knowledge.

....,
Marshal [or Deputy Marshal].

Fees and expenses.

1. Service of warrant.....	
2. Necessary travel, at the rate of six cents a mile each way.....	
3. Actual expenses in custody of property and other services as follows.	
[Here state the particulars.]	

....,
Marshal [or Deputy Marshal].

District of ....., A. D. 18...

Personally appeared before me the said ...., and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

....
Referee in Bankruptcy.

FORM NO. 9.

Bond of Petitioning Creditor.

Know all men by these presents: That we,..... ....., as principal, and ...., as sureties, are held and firmly bound unto ...., in the full and just sum of ..... dollars, to be paid to the said ...., executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this .... day of ....., A. D. 18...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the .... district of ..... against the said ...., and the said .... has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said ...., subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said .... shall indemnify the said .... for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue .

Sealed and delivered in
presence of

.... [SEAL.]
.... [SEAL.]
.... [SEAL.]

Approved this .... day of ....., A. D., 18..
....,
District Judge.

FORM NO 10.

Bond to Marshal.

Know all men by these presents: That we, ..., as principal, and ...., as sureties, are held and firmly bound unto ...., marshal of the United States, for the ..... district of ....., in the full and just sum of ..... dollars, to be paid to the said ...., his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this .... day of ....., A. D. 18...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the

..... district of ....., against the said ...., and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said ...., subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court upon a petition of said .... has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said ...., and the said .... being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the
presence of

.... [SEAL.]
.... [SEAL.]
.... [SEAL.]

Approved this ..... day of ....., A. D. 18...
....,
District Judge.

FORM NO. 11.

Adjudication that Debtor is not Bankrupt.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF	*In Bankruptcy.*

At ....., in said district, on .... day of ....., A. D. 18.., before the Honorable ...., judge of the .... district of .....

This cause came on to be heard at ....., in said court, upon the petition of .... that .... be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, and [*Here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had.*]

And thereupon, and upon consideration of the proofs in said cause (and the arguments of counsel thereon, if any), it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said ..... was not a bankrupt, and that said petition be dismissed, with costs.

Witness the Honorable ...., judge of said court, and the seal thereof, at ....., in said district, on the .... day of ....., A. D. 18...

[SEAL OF THE COURT.] ....
Clerk.

FORM NO. 12.

Adjudication of Bankruptcy.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 18.., before the Honorable ...., judge of said court in bankruptcy, the petition of .... that .... be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said .... is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable ...., judge of said court, and the seal thereof, at ....., in said district, on the ..... day of ....., A. D. 18...

[SEAL OF THE COURT.]

....,
Clerk.

FORM NO. 13.

Appointment, Oath and Report of Appraisers.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

It is ordered that ...., of ....., ... of ....., and ...., of ....., three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this .... day of ....., A. D. 18...

....,
Referee in Bankruptcy.

.... District of ....., ss:

Personally appeared the within-named .... and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

....
....
....

Subscribed and sworn to before me, this .... day of ....., A. D. 18...

....
[*Official Character.*]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

	Dollars.	Cents.

In witness whereof we hereunto set our hands, at ....., this .... day of ....., A. D. 18...

....,
....,
....

FORM NO. 14.

Order of Reference.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt*.	*In Bankruptcy.*

Whereas ...., of ....., in the county of ..... and district aforesaid, on the .... day of ....., A. D. 18.., was duly adjudged a bankrupt upon a petition filed in this court by [*or*, against] him on the .... day of ....., A. D. 18.., according to the provisions of the acts of Congress relating to bankruptcy.

It is thereupon ordered, that said matter be referred to ...., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said .... shall attend before said referee on the .... day of ....., at ....., and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said ..... bankruptcy.

Witness the Honorable ...., judge of the said court, and the seal thereof, at ....., in said district, on the .... day of ....., A. D. 18...

[SEAL OF THE COURT.] ....
Clerk.

FORM NO. 15.

Order of Reference in Judge's Absence.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF	*In Bankruptcy.*

Whereas on the .... day of ....., A. D. 18.., a petition was filed to have ...., of ....., in the county of ..... and district aforesaid, adjudged a bankrupt according to the provisions of the acts of Congress relating to bankruptcy; and whereas the judge of said court was absent from said district at the time of filing said petition [*or*, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors], it is thereupon ordered that the said matter be referred to ...., one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said .... shall attend before said referee on the .... day of ....., A. D. 18.., at .....

Witness my hand and seal of the court, at ....., in said district, on the .... day of ....., A. D. 18...

[SEAL OF THE COURT.] ....,
Clerk.

FORM NO. 16.

Referee's Oath of Office.

I, ..., do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.

....,

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
District Judge.

FORM NO. 17.

Bond of Referee.

Know all men by these presents: That we .... of .... as principal, and .... of .... and .... of ...., as sureties, are held and firmly bound to the United States of America in the sum of ..... dollars, lawful money of the United

States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this .... day of ....., A. D. 18...

The condition of this obligation is such that whereas the said ...., has been on the ....day of ....., A. D. 18.., appointed by the Honorable ...., judge of the district court of the United States for the ..... district of ....., a referee in bankruptcy, in and for the county of ....., in said district, under the acts of Congress relating to bankruptcy.

Now, therefore, if the said .... shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

.... [SEAL.]
.... [SEAL.]
.... [SEAL.]
.... [SEAL.]

Approved this .... day of ....., A. D. 18...

....,
District Judge.

FORM NO. 18.

Notice of First Meeting of Creditors.

In the District Court of the United States for the .... District of .....
In Bankruptcy.

IN THE MATTER OF .. . . *Bankrupt .*	*In Bankruptcy*

To the creditors of ...., of ....., in the county of ....., and district aforesaid, a bankrupt:

Notice is hereby given that on the .... day of ....., A. D. 18.., said .... was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at ..... in ....., on the .... day of ....., A. D. 18.., at .. o'clock in the .... noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

....,
Referee in Bankruptcy.

...., 18..

FORM NO. 19.

List of Debts Proved at First Meeting.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18.., before ....., referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residence.	Debts proved.	
		Dolls.	Cts.

....,
Referee in Bankruptcy.

FORM NO. 20.

General Letter of Attorney in Fact when Creditor is not Represented by Attorney at Law.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

To .....:

.....

I, ..., of ....., in the county of ..... and State of ....., do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time,

and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the ..... day of ....., A. D. 18..

...., [L. S.]

Signed, sealed, and delivered
in presence of
....

Acknowledged before me this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 21.

Special Letter of Attorney in Fact.

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

To .....,
.....:

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at ....., on the ..... day of ....., before ....., or any adjournment thereof, and then and there ..... for ..... and in ..... name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

...., [L. S.]

In witness whereof I have hereunto signed my name and affixed my seal the ..... day of ....., A. D. 18..

Signed sealed, and delivered
in presence of
....

Acknowledged before me this ..... day of ....., A. D. 18...

....,
[*Official Character.*]

FORM No. 22.

Appointment of Trustee by Creditors.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of .... ., A. D. 18.., before ....., referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [*here insert the names of the newspapers in which notice was published*], we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint ....., of ....., in the county of ..... and State of ....., to be the trustee.. of the said bankrupt's estate and effects.

Signatures of creditors.	Residences of the same.	Amount of debt.	
		Dolls.	Cts.

Ordered, that the above appointment of trustee .. be, and the same is hereby approved.

....,
Referee in Bankruptcy.

FORM No. 23.

Appointment of Trustee by Referee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ... . *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18.., before ...., referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given

in the [*here insert the names of the newspapers in which notice was published*] I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustees of said bankrupt's estate, and therefore I do hereby appoint ...., of ....., in the county of ..... and State of ....., as trustee of the same.

....,
Referee in Bankruptcy.

FORM NO. 24.

Notice to Trustee of His Appointment.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

To ....., of ....., in the county of ....., and district aforesaid:

I hereby notify you that you were duly appointed trustee [*or* one of the trustees] of the estate of the above-named bankrupt at the first meeting of the creditors, on the ..... day of ....., A. D. 18.., and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at ..... dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at ..... the ..... day of ....., A. D. 18...

....,
Referee in Bankruptcy.

FORM NO 25.

Bond of Trustee.

Know all men by these presents: That we, ..., of ....., as principal, and ...., of ....., and ...., of ....., as sureties, are held and firmly bound unto the United States of America in the sum of ..... dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this ..... day of ....., A. D. 18...

The condition of this obligation is such, that whereas the above-named .... was, on the ..... day of ....., A. D. 18.., appointed trustee in the case pending in bankruptcy in said court, wherein .... is the bankrupt, and he, the said .... has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said ...., trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in
presence of

...., [SEAL.]
...., [SEAL.]
...., [SEAL.]

FORM NO. 26.

Order Approving Trustee's Bond.

At a court of bankruptcy, held in and for the ..... District of ....., at ....., ..., this ..... day of ....., 18...

Before ....., referee in bankruptcy, in the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

It appearing to the Court ...., of ....., and in said district, has been duly appointed trustee of the estate of the above-named bankrupt and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors [*or* by order of the court], to-wit, in the sum of ..... dollars, it is ordered that the said bond be, and the same is hereby, approved.

....,
Referee in Bankruptcy.

FORM NO. 27.

Order that no Trustee be Appointed.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appoint-

ment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

....,
Referee in Bankruptcy.

FORM NO. 28.

Order for Examination of Bankrupt.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., on the ..... day of ....., A. D. 18..

Upon the application of ...., trustee of said bankrupt [*or* creditor of said bankrupt], it is ordered that said bankrupt attend before ...., one of the referees in bankruptcy of this court, at ..... on the ..... day of ....., at .. o'clock in the ..... noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

....,
Referee in Bankruptcy.

FORM NO. 29.

Examination of Bankrupt or Witness.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18.., before ...., one of the referees in bankruptcy of said court.

....., of ....., in the county of ..... and State of ....., being duly sworn and examined at the time and place above mentioned, upon his oath says. [*Here insert substance of examination of party.*]

....,
Referee in Bankruptcy.

FORM No. 30.

Summons to Witness.

To ....:

Whereas ...., of ....., in the county of ....., and State of ....., has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the ..... District of .....,

These are to require you, to whom this summons is directed, personally to be and appear before ...., one of the referees in bankruptcy of the said court, at ....., on the ..... day of ....., at .. o'clock in the ..... noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable ...., Judge of said court, and the seal thereof at ....., this ..... day of ....., A. D. 18..

....,
Clerk.

Return of Summons to Witness.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

On this ..... day of ....., A. D. 18.., before me came ...., of ....., in the county of ..... and State of ....., and makes oath, and says that he did, on ....., the ..... day of ....., A. D. 18.., personally serve ...., of ....., in the county of ..... and State of ....., with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceeding in bankruptcy named in said summons.

....,

Subscribed and sworn to before me, this .... day of ....., A. D. 18..

....,

FORM No. 31.

Proof of Unsecured Debt.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district of ....., on the ..... day of ....., A. D. 18.., came ...., of ....., in the county of ....., in said district of ....., and made oath, and says that ...., the person by

[*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of ..... dollars; that the consideration of said debt is as follows: .....
.....
.....
that no part of said debt has been paid [except .....];
that there are no set-offs or counterclaims to the same [except .....
.....];
and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

....,
Creditor.

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 32.

Proof of Secured Debt.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district of ....., on the ..... day of ....., A. D. 18... came ...., of ....., in the county of ....., in said district of ....., and made oath, and says that ...., the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of ..... dollars; that the consideration of said debt is as follows .....;
that no part of said debt has been paid [except .....];
that there are no set-offs or counterclaims to the same [except .....];
and that the only securities held by this deponent for said debt are the following: .....
.....
.....

....,
Creditor.

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM No. 33.

Proof of Debt Due Corporation.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district of ....., on the ..... day of ....., A. D. 18.., came ...., of ....., in the county of ..... and State of ....., and made oath and says that he is ..... of the ....., a corporation incorporated by and under the laws of the State of ....., and carrying on business at ....., in the county of ..... and State of ....., and that he is duly authorized to make this proof, and says that the said ...., the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is justly and truly indebted to said corporation in the sum of ..... dollars; that the consideration of said debt is as follows: .....; that no part of said debt has been paid [except .....]; that there are no set-offs or counterclaims to the same [except ....]; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

....,
..... *of said Corporation.*

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM No. 34.

Proof of Debt by Partnership.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district of ....., on the ..... day of ....., A. D. 18.., came ...., of ....., in the county of ....., in said

district of ....., and made oath and says that he is one of the firm of ...., consisting of himself and ...., of ....., in the county of ..... and State of .....; that the said ...., the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of ..... dollars; that the consideration of said debt is as follows: .....
.....;
that no part of said debt has been paid [except .....]; that there are no set-offs or counterclaims to the same [except .....]; and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

....,
Creditor.

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 35.

Proof of Debt by Agent or Attorney.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

At ..... in said district of ..... on the ..... day of ....., A. D. 18.., came ...., of ....., in the county of ....., and State of ....., attorney [*or* authorized agent] of ....., in the county of ....., and State of ....., and made oath and says, that ...., the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said ...., in the sum of ..... dollars; that the consideration of said debt is as follows:.....
.....;
that no part of said debt has been paid [except .....]; and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that

this deposition cannot be made by the claimant in person because .....
.....,
and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

....

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 36.

Proof of Secured Debt by Agent.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., in said district of ....., on the day of ....., A. D. 18.., came ...., of ....., in the county of ....., and State of ....., attorney [*or*, authorized agent] of ....., in the county of ....., and State of ....., and made oath, and says that ...., the person by [*or*, against] whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said .... in the sum of ..... dollars; that the consideration of said debt is as follows: .....
.....;
that no part of said debt has been paid [except .....
.....];
that there are no set-offs or counterclaims to the same [except .....
.....];
and that the only securities held by said ..... for said debt are the following: .....
.....;
and this deponent further says that this deposition cannot be made by the claimant in person because .....
.....,
and that he is duly authorized by his principal to make this deposition,

and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

....

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,

[*Official Character.*]

FORM No. 37.

Affidavit of Lost Bill or Note.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

On this ..... day of ....., A. D. 18.., at ....., came ...., of ..... in the county of ....., and State of ....., and makes oath and says that the bill of exchange [*or* note], the particulars whereof are underwritten, has been lost under the following circumstances, to-wit,

....

and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said ...., or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill [*or* note], nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

Bill or note above referred to.

Date.	Drawer or maker.	Acceptor.	Sum.

....,

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,

[*Official Character.*]

FORM NO. 38.

Order Reducing Claim.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18...

Upon the evidence submitted to this court upon the claim of ..... against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of ....., as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of ....., and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [*if with interest*, with interest thereon from the ..... day of ....., A. D. 18..].

....,
Referee in Bankruptcy.

FORM NO. 39.

Order Expunging Claim.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18...

Upon the evidence submitted to the court upon the claim of ..... against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

....,
Referee in Bankruptcy.

FORM NO. 40.

List of Claims and Dividends to be Recorded by Referee and by him Delivered to Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18...

A list of debts proved and claimed under the bankruptcy of ...., with ..... dividend at the rate of ..... per cent. this day declared thereon by ...., a referee in bankruptcy.

No.	Creditors. [To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]	Sum proved.		Dividend.	
		$	c.	$	c.

....,
Referee in Bankruptcy.

FORM NO. 41.

Notice of Dividend.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., on the ..... day of ....., A. D. 18..

To ....,

Creditor of ...., bankrupt:

I hereby inform you that you may, on application at my office, ..., on the ..... day of ....., or on any day thereafter, between the hours of ....., receive a warrant for the ..... dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter.

....,

Trustee.

Creditor's Letter to Trustee.

To ....,

Trustee in bankruptcy of the estate of ...., bankrupt:

Please deliver to .... the warrant for dividend payable out of the said estate to me.

....,

Creditor.

FORM NO. 42.

Petition and Order for Sale by Auction of Real Estate.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

Respectfully represents ...., trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion

of the real estate of said bankrupt, to-wit: [*here describe it and its estimated value*] should be sold by auction, in lots or parcels, and upon terms and conditions, as follows: .....
.....
Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this ..... day of ....., A. D. 18...

....,
Trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing .... in favor of said petition and .... in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this ..... day of ....., A. D. 18...

....,
Referee in Bankruptcy.

FORM NO. 43.

Petition and Order for Redemption of Property from Lien.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt*	*In Bankruptcy.*

Respectfully represents ...., trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to-wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe the mortgage*], or to a conditional contract [*describing it*], or to a lien [*describe the origin and nature of the lien*], [*or, if the property be personal property*, has been pledged or deposited and is subject to a lien] for [*describe the nature of the lien*], and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore he prays that he may be empowered to pay out of

the assets of said estate in his hands the sum of ....., being the amount of said lien, in order to redeem said property therefrom.

Dated this ..... day of ....., A. D. 18...

....,

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing .... in favor of said petition and .... in opposition thereto], it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of ....., being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this ..... day of ....., A. D. 18...

....,

Referee in Bankruptcy.

FORM NO. 44.

Petition and Order for Sale Subject to Lien.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

Respectfully represents ...., trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to-wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien,*] or [*if the property be personal property,* has been pledged or deposited and is subject to a lien] for [*describe the nature of the lien*], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this ..... day of ....., A. D. 18...

....,

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing .... in favor of said petition and .... in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [*or*, at private sale], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this ..... day of ....., A. D. 18..

....,

Referee in Bankuptcy.

FORM NO. 45.

Petition and Order for Private Sale.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt*.	*In Bankruptcy.*

Respectfully represents ...., duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to-wit, ...
.....
.....
it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to-wit, ...
.....
.....

Wherefore he prays that he may be authorized to sell the said property at private sale.

Dated this ..... day of ....., A. D. 18...

....

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing no adverse interest being represented thereat [*or* after hearing .... in favor of said petition and .... in opposition thereto], it is ordered that the said

trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this ..... day of ....., A. D. 18..

....,

Referee in Bankruptcy.

FORM NO. 46.

Petition and Order for Sale of Perishable Property.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

Respectfully represents .... the said bankrupt, [*or*, a creditor, *or* the receiver, *or* the trustee of the said bankrupt's estate].

That a part of the said estate, to-wit, ...
.....
.....
now in ....., is perishable, and that there will be loss if the same is not sold immediately.

Wherefore, he prays the court to order that the same be sold immediately as aforesaid.

Dated this ..... day of ....., A. D. 18..

.....

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to the creditors of the said bankrupt, [*or* without notice to the creditors], now, after due hearing, no adverse interest being represented thereat, [*or* after hearing .... in favor of said petition and .... in opposition thereto] I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is, therefore, ordered that the same be sold forthwith and the proceeds thereof deposited in court.

Witness my hand this ..... day of ....., A. D. 18..

....,

Referee in Bankuptcy.

FORM No. 47.

Trustees' Report of Exempted Property.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

At ....., on the ..... day of ....., 18..

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of Congress relating to bankruptcy.

General head.	Particular description.	Value.	
		$	c.
Military uniform, arms, and equipments.....			
Property exempted by State laws.....			

....,
Trustee.

FORM No. 48.

Trustee's Return of no Assets.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

At ....., in said district, on the ..... day of ....., A. D. 18..

On the day aforesaid, before me comes ...., of ....., in the county of ..... and State of ....., and makes oath, and says that he, as trustee of the estate and effects of the above-named bankrupt, neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me, this ..... day of ....., A. D. 18..

....,
Referee in Bankruptcy.

FORM No. 49.

Account of Trustee.

DR. *The estate of ...., bankrupt , in account with ...., trustee.* CR.

		Dolls.	Cts.	Dolls.	Cts.			Dolls.	Cts.	Dolls.	Cts.

FORM NO. 50.

Oath to Final Account of Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

On this ..... day of ....., A. D. 18.., before me comes ...., of ....., in the county of ..... and State of ....., and makes oath, and says that he was, on the ..... day of ....., A. D. 18.., appointed trustee of the estate and effects of the above-named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed, containing ..... sheets of paper, the first sheet whereof is marked with the letter ..... [*reference may here also be made to any prior account filed by said trustee*] is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

....
Trustee.

Subscribed and sworn to before me, at ....., in said ..... district of ....., this ..... day of ....., A. D. 18..

....,
[*Official Character.*]

FORM NO. 51.

Order Allowing Account and Discharging Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

....
Referee in Bankruptcy.

FORM NO. 52.

Petition for Removal of Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

To the Honorable ....,

Judge of the District Court for the ..... District of .....:

The petition of ...., one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that ...., heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to-wit: [*here set forth the particular cause or causes for which such removal is requested.*]

Wherefore ..... pray that notice may be served upon said ....., trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

....

FORM NO. 53.

Notice of Petition for Removal of Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., on the ..... day of ....., A. D. 18..

To ....,

Trustee of the estate of ...., bankrupt:

You are hereby notified to appear before this court at ....., on the ..... day of ....., A. D. 18.., at .. o'clock .. m., to show cause (if any you have) why you should not be removed from your trust as trustee as as aforesaid, according to the prayer of the petition of ...., one of the creditors of said bankrupt, filed in this court on the ..... day of ....., A. D. 18.., in which it is alleged [*here insert the allegation of the petition*].

....
Clerk.

FORM NO. 54.

Order for Removal of Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

Whereas ...., of ....., did, on the ..... day of ....., A. D. 18.., present his petition to this court, praying that for the reasons therein set forth, ..., the trustee of the estate of said ...., bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said ..... and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said .... be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said ...., trustee [*or*, out of the estate of the said ...., subject to prior charges].

Witness the Honorable ...., judge of the said court, and the seal thereof, at ....., in said district, on the ..... day of ....., A. D. 18..

[SEAL OF THE COURT.] ....
Clerk.

FORM NO. 55.

Order for Choice of New Trustee.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

At ....., on the ..... day of ....., A. D. 18...

Whereas by reason of the removal [*or* the death *or* resignation] of .... heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee.

It is ordered, that a meeting of the creditors of said bankrupt be held at ..... in ....., in said district, on the ..day of ....., A. D. 18.., for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

....,
Referee in Bankuptcy.

FORM NO. 56.

Certificate by Referee to Judge.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy.*

I, ..., one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: [*Here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon.*]

And the said question is certified to the judge for his opinion thereon.

Dated at ....., the ..... day of ....., A. D. 18...

....,
Referee in Bankruptcy.

FORM NO. 57.

Bankrupt's Petition for Discharge.

IN THE MATTER OF ..... *Bankrupt .*	*In Bankruptcy. .*

To the Honorable ....,
Judge of the District Court of the United States for the District of .....:

....., ..., of ....., in the county of ..... and State of ....., in said district, respectfully represents that on the .... day of ...., last past, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of

property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this ..... day of ....., A. D. 18..

....,

Bankrupt.

Order of Notice Thereon.

District of ....., *ss.:*

On this ..... day of ....., A. D. 189.., on reading the foregoing petition,

It is ordered by the court, that a hearing be had upon the same on the... day of ....., A. D. 18.., before said court, at ....., in said district, at .. o'clock in the ..... noon; and that notice thereof be published in ...., a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the Honorable ...., judge of the said court, and the seal thereof, at ....., in said district, on the ..... day of ....., A. D. 18...

[SEAL OF THE COURT.] ....,

Clerk.

..... hereby depose, on oath, that the foregoing order was published in the ..... on the following days, viz.:

On the ..... day of ..... and on the ..... day of ....., in the year 18...

District of .....

...., 18..

Personally appeared ...., and made oath that the foregoing statement by him subscribed is true.

Before me,

.....,

[*Official Character.*]

I hereby certify that I have on this ..... day of ....., A. D. 18.. sent by mail copies of the above order, as therein directed.

....,

Clerk.

FORM No. 58.

Specification of Grounds of Opposition to Bankrupt's Discharge.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

...., of ....., in the county of ..... and State of ....., a party interested in the estate of said ...., bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification: [*Here specify the grounds of opposition.*]

....,
Creditor.

FORM No. 59.

Discharge of Bankrupt.

District Court of the United States, ... District of .....:

Whereas, ... of ..... in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said .... be discharged from all debts and claims which are made provable by said acts against his estate and which existed on the ..... day of ....., A. D. 18.., on which day the petition for adjudication was filed ..... him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable ...., judge of said district court, and the seal thereof this ..... day of ....., A. D. 18...

[SEAL OF THE COURT.] ....,
Clerk.

FORM No. 60.

Petition for Meeting to Consider Composition.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt*	*In Bankruptcy.*

To the Honorable ...., Judge of the District Court of the United States for the ..... District of .....:

The above-named bankrupt respectfully represent that a composition of ..... per cent. upon all unsecured debts, not entitled to a priority ..... in satisfaction of ..... debts has been proposed by .... to ..... creditors, as provided by the acts of Congress relating to bankruptcy, and .... verily believe that the said composition will be accepted by a majority in number and in value of ..... creditors whose claims are allowed.

Wherefore, he pray that a meeting of ..... creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court.

....,
Bankrupt.

FORM No. 61.

Application for Confirmation of Composition.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt* .	*In Bankruptcy.*

To the Honorable .... Judge of the District Court of the United States for the .... District of .....:

At ..... in said district, on the ..... day of ....., A. D. 18.., now comes .... the above-named bankrupt, and respectfully represents to the court that, after he had been examined in open court [*or* at a meeting of his creditors] and had filed in court a schedule of his property

and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of ..... dollars, has been deposited subject to the order of the judge, in the ..... National Bank, of ....., a designated depository of money in bankruptcy cases.

Wherefore the said .... respectfully asks that the said composition may be confirmed by the court.

....,

Bankrupt.

FORM NO. 62.

Order Confirming Composition.

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF .... *Bankrupt.*	*In Bankruptcy.*

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of Congress relating to bankruptcy: It is therefore hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the Honorable ...., judge of said court, and the seal thereof, this ..... day of ....., A. D. 18..

[SEAL OF THE COURT.]

....,

Clerk.

FORM NO. 63.

Order of Distribution on Composition.

UNITED STATES OF AMERICA:

In the District Court of the United States for the ..... District of .....

IN THE MATTER OF ..... *Bankrupt.*	*In Bankruptcy.*

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to-wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the Honorable ...., judge of said court, and the seal thereof, this ..... day of ....., A. D. 18..

[SEAL OF THE COURT.] ....,

Clerk.

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BANKRUPTCY ACTS.

1800—1841.

Bankruptcy Act of April 4, 1800.

An Act to establish an uniform System of Bankruptcy throughout the United States.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of June next, if any merchant or other person residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter or marine insurer, shall, with intent unlawfully to delay or defraud his or her creditors, depart from the State in which such person usually resides, or remain absent therefrom, or conceal him or herself therein, or keep his or her house, so that he or she cannot be taken, or served with process, or willingly or fraudulently procure him or herself to be arrested, or his or her lands, goods, money or chattels to be attached, sequestered or taken in execution, or make or cause to be made any fraudulent conveyance of his or her lands, or chattels, or make or admit any false or fraudulent security or evidence of debt, or being arrested for debt, or having surrendered him or herself in discharge of bail, shall remain in prison two months or more, or escape therefrom, or whose lands or effects being attached by process issuing out of, or returnable to, any court of common law, shall not, within two months after written notice thereof, enter special bail and dissolve the same, or in districts in which attachments are not dissolved by the entry of special bail, being arrested for debt after his or her lands and effects, or any part thereof, have been attached for a debt or debts amounting to one thousand dollars or upwards, shall not, upon notice of such attachment, give sufficient security for the payment of what may be recovered in the suit in which he or she shall be arrested, at or

before the return-day of the same, to be approved by the judge of the district, or some judge of the court out of which the process issued upon which he is arrested, or to which the same shall be returnable, every such person shall be deemed and adjudged a bankrupt: Provided, that no person shall be liable to a commission of bankruptcy if the petition be not preferred, in manner hereinafter directed, within six months after the act of bankruptcy committed.

§ 2. And be it further enacted, That the judge of the district court of the United States, for the district where the debtor resides, or usually resided at the time of committing the act of bankruptcy, upon petition in writing against such person or persons being bankrupt, to him to be exhibited by any one creditor; or by a greater number, being partners, whose single debt shall amount to one thousand dollars, or by two creditors whose debts shall amount to one thousand, five hundred dollars, or by more than two creditors whose debts shall amount to two thousand dollars, shall have power, by commission under his hand and seal, to appoint such good and substantial persons, being citizens of the United States, and resident in such district, as such judge shall deem proper, not exceeding three, to be commissioners of the said bankrupt, and in case of vacancy or refusal to act, to appoint others from time to time as occasion may require: Provided always, that before any commission shall issue, the creditor or creditors petitioning shall make affidavit or solemn affirmation before the said judge of the truth of his, her or their debts, and give bond, to be taken by the said judge, in the name and for the benefit of the said party so charged as a bankrupt, and in such penalty, and with such surety, as he shall require, to be conditioned for the proving of his, her or their debts, as well before the commissioners as upon a trial at law, in case the due issuing forth of the said commission shall be contested, and also for proving the party a bankrupt, and to proceed on such commission in the manner herein prescribed. And if such debt shall not be really due, or after such commission taken out it cannot be proved that the party was a bankrupt, then the said judge shall upon the petition of the party aggrieved, in case there be occasion, deliver such bond to the said party, who may sue thereon, and recover such damages under the penalty of the same, as, upon trial at law, he shall make appear he has sustained, by reason of any breach of the condition thereof.

§ 3. And be it further enacted, That before the commissioners shall be capable of acting, they shall respectively take and subscribe the following oath or affirmation, which shall be administered by the judge issuing the commission, or by any of the judges of the Supreme Court of the United States, or any judge, justice or chancellor of any State court, and filed in the office of the clerk of the district court: "I, A. B., do swear, or affirm, that I will faithfully, impar-

tially and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner, in a commission of bankruptcy against , and that without favor or affection, prejudice or malice." And the commissioners, who shall be sworn as aforesaid, shall proceed, as soon as may be, to execute the same; and upon due examination, and sufficient cause appearing against the party charged, shall and may declare him or her to be a bankrupt: Provided, that before such examination be had, reasonable notice thereof, in writing, shall be delivered to the person charged as a bankrupt; or if he or she be not found at his or her usual place of abode, to some person of the family above the age of twelve years, or if no such person appear, shall be fixed at the front or other public door of the house in which he or she usually resides, and thereupon it shall be in the power of such person, so charged as aforesaid, to demand before, or at the time appointed for such examination, that a jury be empanelled to inquire into the fact or facts alleged as the causes for issuing the commission, and on such demand being made the inquiry shall be had before the judge granting the commission, at such time as he may direct, and in that case such person shall not be declared bankrupt, unless, by the verdict of the jury, he or she shall be found to be within the description of this act, and shall be convicted of some one of the acts described in the first section of this act: Provided also, that any commission which shall be taken out as aforesaid, and which shall not be proceeded in as aforesaid, within thirty days thereafter, may be superseded by the said judge who shall have granted the same, upon the application of the party thereby charged as a bankrupt, or of any creditor of such person, unless the delay shall have been unavoidable, or upon a just occasion.

§ 4. And be it further enacted, That the commissioners so to be appointed shall have power forthwith, after they have declared such person a bankrupt, to cause to be apprehended, by warrant under their hands and seals, the body of such bankrupt, wheresoever to be found within the United States: Provided, they shall think that there is reason to apprehend that the said bankrupt intends to abscond or conceal him or herself, and in case it be necessary in order to take the body of said bankrupt, shall have power to cause the doors of the dwelling-house of such bankrupt to be broken, or the doors of any other house in which he or she shall be found.

§ 5. And be it further enacted, That it shall be the duty of the commissioners so to be appointed, forthwith, after they have declared such person a bankrupt, and they shall have power to take into their possession all the estate, real and personal, of every nature and description, to which the said bankrupt may be entitled, either in law or equity, in any manner whatsoever, and cause the same to be inventoried and appraised to the best value, (his or her necessary wearing apparel, and the necessary wearing apparel of the wife and

children, and necessary beds and bedding of such bankrupt only excepted) and also to take into their possession, and secure, all deeds and books of account, papers and writings belonging to such bankrupt; and shall cause the same to be safely kept, until assignees shall be chosen or appointed, in manner hereafter provided.

§ 6. And be it further enacted, That the said commissioners shall forthwith, after they have declared such person a bankrupt, cause due and sufficient public notice thereof to be given, and in such notice shall appoint some convenient time and place for the creditors to meet, in order to choose an assignee or assignees of the said bankrupt's estate and effects; at which meeting the said commissioners shall admit the creditors of such bankrupt to prove their debts; and where any creditor shall reside at a distance from the place of such meeting, shall allow the debt of such creditor to be proved by oath or affirmation, made before some competent authority, and duly certified, and shall permit any person duly authorized by letter of attorney from such creditor, due proof of the execution of such letter of attorney being first made, to vote in the choice of an assignee or assignees of such bankrupt's estate and effects in the place and stead of such creditor: and the said commissioners shall assign, transfer or deliver over, all and singular, the said bankrupt's estate and effects, aforesaid, with all muniments and evidences thereof, to such person or persons as the major part in value of such creditors, according to the several debts then proved, shall choose as aforesaid: Provided always, That in such choice, no vote shall be given by, or in behalf of, any creditor whose debt shall not amount to two hundred dollars.

§ 7. Provided always, and be it further enacted, That it shall be lawful for the said commissioners, as often as they shall see cause, for the better preserving and securing of the bankrupt's estate, before assignees shall be chosen as aforesaid, immediately to appoint one or more assignee or assignees of the estate and effects aforesaid, or any part thereof; which assignee or assignees aforesaid, or any of them, may be removed at the meeting of the creditors, so to be appointed as aforesaid, for the choice of assignees, is such creditors, entitled to vote as aforesaid, or the major part in value of them, shall think fit; and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt which shall have come to his or their hands or possession, unto such other assignee or assignees as shall be chosen by the creditors as aforesaid; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees as if the first assignment had been made to him or them by the said commissioners; and if such first assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees of their appointment, as aforesaid, to deliver over as aforesaid, all the estate and effects as aforesaid, every such assignee or assignees shall, respectively, forfeit a sum not exceeding five thou-

sand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

§ 8. And be it further enacted, That at any time previous to the closing of the accounts of the said assignee or assignees so chosen as aforesaid, it shall be lawful for such creditors of the bankrupt as are hereby authorized to vote in the choice of assignees, or the major part of them in value, at a regular meeting of the said creditors, to be called for that purpose by the said commissioners, or by one-fourth in value of such creditors, to remove all or any of the assignees chosen as aforesaid, and to choose one or more in his or their place and stead; and such assignee or assignees as shall be so removed shall deliver up all the estate and effects of such bankrupt which shall have come into his or their hands or possession, unto such new assignee or assignees as shall be chosen by the creditors at such meeting; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees as if the first assignment had been made to him or them by the said commissioners: and if such former assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees of their appointment, as aforesaid, to deliver over, as aforesaid, all the estate and effects aforesaid, every such former assignee or assignees shall respectively forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and moreover shall be liable for the property so detained.

§ 9. And be it further enacted, That whenever a new assignee or assignees shall be chosen as aforesaid, no suit at law or in equity shall be thereby abated; but it shall and may be lawful for the court in which any suit may depend, upon the suggestion of the removal of a former assignee or assignees, and of the appointment of a new assignee or assignees, to allow the name of such new assignee or assignees, to be substituted in place of the name or names of the former assignee or assignees, and thereupon the suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the suit in his or their own names.

§ 10. And be it further enacted, That the assignment or assignments of the commissioners of the bankrupt's estate and effects as aforesaid, made as aforesaid, shall be good at law or in equity against the bankrupt, and all persons claiming by, from or under such bankrupt, by any act done at the time, or after, he shall have committed the act of bankruptcy upon which the commission issued: Provided always, that in case of a bona-fide purchase made before the issuing of the commission from or under such bankrupt, for a valuable consideration, by any person having no knowledge, information or notice of any act of bankruptcy committed, such purchase shall not be invalidated or impeached.

§ 11. And be it further enacted, That the said commissioners shall have power, by deed or deeds, under their hands and seals, to assign and convey to the assignee or assignees to be appointed or chosen as aforesaid, any lands, tenements or hereditaments which such bankrupt shall be seized of or entitled to, in fee tail, at law, or in equity, in possession, remainder or reversion, for the benefit of the creditors; and all such deeds being duly executed and recorded, according to the laws of the State within which such lands, tenements or hereditaments may be situated, shall be good and effectual against all persons whom the said bankrupt, by common recovery, or other means, might or could bar of any estate, right, title of or in the said lands, tenements or hereditaments.

§ 12. And be it further enacted, That if any bankrupt shall have conveyed or assured any lands, goods or estate, unto any person, upon condition or power of redemption, by payment of money or otherwise, it shall be lawful for the commissioners, or for any person by them duly authorized for that purpose, by writing, under their hands and seals, to make tender of money or other performance according to the nature of such condition, as fully as the bankrupt might have done; and the commissioners, after such performance or tender, shall have power to assign such lands, goods and estate for the benefit of the creditors, as fully and effectually as any other part of the estate of such bankrupt.

§ 13. And be it further enacted, That the commissioners aforesaid shall have power to assign, for the use aforesaid, all the debts due to such bankrupt, or to any other person for his or her use or benefit; which assignment shall vest the property and right thereof in the assignee or assignees of such bankrupt, as fully as if the bond, judgment, contract or claim had originally belonged or been made to the said assignees; and after the said assignment, neither the said bankrupt nor any person acting as trustee for him or her, shall have power to recover or discharge the same, nor shall the same be attached as the debt of the said bankrupt; but the assignee or assignees aforesaid shall have such remedy to recover the same, in his or their own name or names, as such bankrupt might or could have had if no commission of bankruptcy had issued. And when any action in the name of such bankrupt shall have been commenced, and shall be pending for the recovery of any debt or effects of such bankrupt, which shall be assigned, or shall or might become vested in the assignee or assignees of such bankrupt as aforesaid, then such assignee or assignees may claim to be, and shall be thereupon, admitted to prosecute such action in his or their name, for the use and benefit of the creditors of such bankrupt; and the same judgment shall be rendered in such action, and all attachments and other security taken therein shall be in like manner holden and liable, as if the said action had been originally commenced in the name of said assignee or assignees, after the original plaintiff therein had become a bankrupt

as aforesaid: Provided, that where a debtor shall have, bona-fide, paid his debt to any bankrupt, without notice that such person was bankrupt, he or she shall not be liable to pay the same to the assignee or assignees.

§ 14. And be it further enacted, That if complaint shall be made or information given to the commissioners, or if they shall have good reason to believe or suspect, that any of the property, goods, chattels, or debts, of the bankrupt are in the possession of any other person, or that any person is indebted to or for the use of the bankrupt, then the said commissioners shall have power to summon, or to cause to be summoned, by their attorney or other person duly authorized by them, all such persons before them, or the judge of the district where such person shall reside, by such process, or other means, as they shall think convenient, and upon their appearance to examine them by parole or by interrogatories, in writing, on oath or affirmation, which oath or affirmation they are hereby empowered to administer, respecting the knowledge of all such property, goods, chattels and debts; and if such person shall refuse to be sworn or affirmed, and to make answer to such questions or interrogatories as shall be administered, and to subscribe the said answers, or upon examination shall not declare the whole truth touching the subject-matter of such examination, then it shall be lawful for the commissioners or judge to commit such person to prison, there to be detained until they shall submit themselves to be examined in manner aforesaid, and they shall, moreover, forfeit double the value of all the property, goods, chattels and debts by them concealed.

§ 15. And be it further enacted, That if any of the aforesaid persons shall, after legal summons to appear before the commissioners or judge, to be examined, refuse to attend, or shall not attend at the time appointed, having no such impediment as shall be allowed of by the commissioners or judge it shall be lawful for the said commissioners or judge to direct their warrants to such person or persons as by them shall be thought proper, to apprehend such persons as shall refuse to appear, and to bring them before the commissioners or judge to be examined, and upon their refusal to come, to commit them to prison, until they shall submit themselves to be examined according to the directions of this act: Provided, that such witnesses as shall be so sent for shall be allowed such compensation as the commissioners or judge shall think fit, to be ratably borne by the creditors; and if any person, other than the bankrupt, either by subornation of others, or by his or her own act, shall wilfully or corruptly commit perjury, shall on conviction thereof be fined not exceeding four thousand dollars and imprisoned not exceeding two years, and moreover shall, in either case, be rendered incapable of being a witness in any court of record.

§ 16. And be it further enacted, That if any person or persons shall fraudulently or collusively claim any debts, or claim or detain

any real or personal estate of the bankrupt, every such person shall forfeit double the value thereof, to and for the use of the creditors.

§ 17. And be it further enacted, That if any person, prior to his or her becoming a bankrupt, shall convey to any of his or her children, or other persons, any lands or goods, or transfer his or her debts or demands into other persons' names, with intent to defraud his or her creditors, the commissioners shall have power to assign the same in as effectual a manner as if the bankrupt had been actually seized or possessed thereof.

§ 18. And be it further enacted, That if any person or persons who shall become bankrupt within the intent and meaning of this act, and against whom a commission of bankruptcy shall be duly issued, upon which commission such person or persons shall be declared bankrupt, shall not, within forty-two days after notice thereof, in writing, to be left at the usual place of abode of such person or persons, or personal notice in case such person or persons be then in prison, and notice given in some gazette, that such commission hath been issued, and of the time and place of meeting of the commissioners, surrender him or herself to the said commissioners, and sign or subscribe such surrender, and submit to be examined, from time to time, upon oath or solemn affirmation, by and before such commissioners, and in all things conform to the provisions of this act, and also upon such his or her examination fully and truly disclose and discover all his or her effects and estate, real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times, he or she hath disposed of, assigned or transferred, any of his or her goods, wares or merchandise, monies or other effects and estate, and of all books, papers and writings relating thereunto of which he or she was possessed, or in or to which he or she was in any way interested or entitled, or which any person or persons shall then have, or shall have had in trust for him or her, or for his or her use, at any time before or after the issuing of the said commission, or whereby such bankrupt, or his or her family, then hath or may have or expect any profit, possibility of profit, benefit or advantage whatsoever, except only such part of his or her estate and effects as shall have been really and bona-fide before sold and disposed of in the way of his or her trade and dealings, and except such sums of money as shall have been laid out in the ordinary expenses of his or her family, and also upon such examination, execute in due form of law such conveyance, assurance and assignment of his or her estate, whatsoever and wheresoever, as shall be devised and directed by the commissioners, to vest the same in the assignees, their heirs, executors, administrators and assigns for ever, in trust, for the use of all and every the creditors of such bankrupt, who shall come in and prove their debts under the commission; and deliver up unto the commissioners all such part of his or her, the said bankrupt's goods, wares, merchandise, money, effects and estate, and all books, papers and writing thereunto re-

lating, as at the time of such examination shall be in his or her possession, custody or power, his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding of such bankrupt only excepted, then he or she the said bankrupt, upon the conviction of any wilful default or omission in any of the matters or things aforesaid, shall be adjudged a fraudulent bankrupt, and shall suffer imprisonment for a term not less than twelve months, nor exceeding ten years, and shall not at any time after be entitled to the benefits of this act: Provided always, that in case any bankrupt shall be in prison or custody at the time of issuing such commission, and is willing to surrender and submit to be examined according to the directions of this act, and can be brought before the said commissioners and creditors for that purpose, the expense thereof shall be paid out of the said bankrupt's effects, and in case such bankrupt is in execution, or cannot be brought before the commissioners, that then the said commissioners, or some one of them, shall from time to time attend the said bankrupt in prison or custody, and take his or her discovery as in other cases, and the assignees or one of them, or some person appointed by them, shall attend such bankrupt in prison or custody, and produce his or her books, papers and writings, in order to enable him or her to prepare his or her discovery; a copy whereof the said assignees shall apply for, and the said bankrupt shall deliver to them or their order within a reasonable time after the same shall have been required.

§ 19. And be it further enacted, That the said commissioners shall appoint, within the said forty-two days, so limited as aforesaid, for the bankrupt to surrender and conform as aforesaid, not less than three several meetings for the purposes aforesaid, the third of which meetings shall be on the last of the said forty-two days: Provided always, that the judge of the district within which such commission issues shall have power to enlarge the time so limited as aforesaid, for the purposes aforesaid, as he shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days, so as such order for enlarging the time be made at least six days before the expiration of said term.

§ 20. And be it further enacted, That it shall be lawful for the commissioners, or any other person or officers by them to be appointed, by their warrant, under their hands and seals, to break open in the day time the houses, chambers, shops, warehouses, doors, trunks or chests, of the bankrupt, where any of his or her goods or estate, deeds, books of account or writings, shall be, and to take possession of the goods, money and other estate, deeds, books of account or writings of such bankrupt.

§ 21. And be it further enacted, That if the bankrupt shall refuse to be examined, or to answer fully, or to subscribe his or her examination as aforesaid, it shall be lawful for the commissioners to commit the offender to close imprisonment until he or she shall conform him or herself; and if the said bankrupt shall submit to be examined,

and upon his or her examination it shall appear that he or she hath committed wilful or corrupt perjury, he or she may be indicted therefor, and being thereof convicted shall suffer imprisonment for a term not less than two years, nor exceeding ten years.

§ 22. And be it further enacted, That every bankrupt having surrendered, shall, at all seasonable times before the expiration of the said forty-two days, as aforesaid, or of such further time as shall be allowed to finish his or her examination, be at liberty to inspect his or her books and writings, in the presence of some person to be appointed by the commissioners, and to bring with him or her, for his or her assistance, such persons as he or she shall think fit, not exceeding two at one time, and to make extracts and copies to enable him or her to make a full discovery of his or her effects; and the said bankrupt shall be free from arrests, in coming to surrender, and after having surrendered to the said commissioners for the said forty-two days, or such farther time as shall be allowed for the finishing his or her examination; and in case such bankrupt shall be arrested for debt, or taken on any escape warrant or execution, coming to surrender, or after his or her surrender within the time before mentioned, then on producing such summons or notice under the hands of the commissioners, and giving the officer a copy thereof, he or she shall be discharged; and in case any officer shall afterwards detain such bankrupt, such officer shall forfeit to such bankrupt, for his or her own use, ten dollars for every day he shall detain the bankrupt.

§ 23. And be it further enacted, That every person who shall knowingly or wilfully receive or keep concealed any bankrupt so as aforesaid summoned to appear, or who shall assist such bankrupt in concealing him or herself, or in absconding, shall suffer such imprisonment, not exceeding twelve months, or pay such fine to the United States, not exceeding one thousand dollars, as upon conviction thereof shall be adjudged.

§ 24. And be it further enacted, That the said commissioners shall have power to examine, upon oath or affirmation, the wife of any person lawfully declared a bankrupt, for the discovery of such part of his estate as may be concealed or disposed of by such wife, or by any other person; and the wife shall incur such penalties for not appearing before the said commissioners, or refusing to be sworn or affirmed or examined, and to subscribe her examination, or for not disclosing the truth, as by this act is provided against any other person in like cases.

§ 25. And be it further enacted, That in case any person shall be committed by the commissioners for refusing to answer, or for not fully answering any question, or for any other cause, the commissioners shall in their warrant specify such question or other cause of commitment.

§ 26. And be it further enacted, That if after the bankrupt shall have finished his or her final examination, any other person or persons

shall voluntarily make discovery of any part of such bankrupt's estate, before unknown to the commissioners, such person or persons shall be entitled to five per cent. out of the effects so discovered, and such further reward as the commissioners shall think proper; and any trustee having notice of the bankruptcy, wilfully concealing the estate of any bankrupt for the space of ten days after the bankrupt shall have finished his final examination, as aforesaid, shall forfeit double the value of the estate so concealed, for the benefit of the creditors.

§ 27. And be it further enacted, That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods, or any other satisfaction or security for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and on good proof thereof such commission may and shall be superseded, and it shall and may be lawful for either of the judges having authority to grant the commission as aforesaid, to award any creditor petitioning another commission, and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the whole he or she shall have taken and received, and shall pay back or deliver up the same, or the full value thereof, to the assignee or assignees who shall be appointed or chosen under such commission, in manner aforesaid, in trust for, and to be divided among, the other creditors of the said bankrupt, in proportion to their respective debts.

§ 28. And be it further enacted, That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods, or any other satisfaction or security, for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and on good proof thereof, such commission shall and may be superseded, and it shall and may be lawful for either of the judges, having authority to grant the commission as aforesaid, to award any creditor petitioning another commission; and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the whole he or she shall have taken and received, and shall pay back, or deliver up the same, or the full value thereof, to the assignee or assignees who shall be appointed or chosen under such commission, in manner aforesaid, in trust for, and to be divided amongst, the other creditors of the said bankrupt, in proportion to their respective debts.

§ 29. And be it further enacted, That every person who shall be chosen assignee of the estate and effects of a bankrupt shall, at some time after the expiration of four months, and within twelve months from the time of issuing the commission, cause at least thirty days public notice to be given of the time and place the commissioners and

assignees intend to meet, to make a dividend or distribution of the bankrupt's estate and effects; at which time the creditors who have not before proved their debts shall be at liberty to prove the same; and upon every such meeting the assignee or assignees shall produce to the commissioners and creditors then present fair and just accounts of all his or their receipts and payments, touching the bankrupt's estate and effects, and of what shall remain outstanding, and the particulars thereof, and shall, if the creditors then present, or a major part of them, require the same, be examined upon oath or solemn affirmation before the same commissioners, touching the truth of such accounts; and in such accounts the said assignee or assignees shall be allowed and retain all such sum and sums of money as they shall have paid or expended in suing out and prosecuting the commission, and all other just allowances on account of or by reason or means of their being assignee or assignees; and the said commissioners shall order such part of the net produce of the said bankrupt's estate as by such accounts or otherwise shall appear to be in the hands of the said assignees, as they shall think fit, to be forthwith divided among such of the bankrupt's creditors as have duly proved their debts under such commission, in proportion to their several and respective debts; and the commissioners shall make such their order for a dividend in writing, under their hands, and shall cause one part of such order to be filed amongst the proceedings under the said commission, and shall deliver to each of the assignees under such commission a duplicate of such their order, which order of distribution shall contain an account of the time and place of making such order, and the sum total or quantum of all the debts proved under the commission, and the sum total of the money remaining in the hands of the assignee or assignees to be divided, and how many per cent. in particular is there ordered to be paid to every creditor of his debt; and the said assignee or assignees, in pursuance of such order, and without any deed or deeds of distribution to be made for the purpose, shall forthwith make such dividend and distribution accordingly, and shall take receipts in a book to be kept for the purpose, from each creditor, for the part or share of such dividend or distribution which he or they shall make and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignee for so much as he shall fairly pay, pursuant to such order as aforesaid.

§ 30. And be it further enacted, That within eighteen months next after the issuing of the commission the assignee or assignees shall make a second dividend of the bankrupt's estate and effects, in case the same were not wholly divided upon the first dividend, and shall cause due public notice to be given of the time and place the said commissioners intend to meet to make a second distribution of the bankrupt's estate and effects, and for the creditors who shall not before have proved their debts to come in and prove the same; and at said meeting the said assignees shall produce, on oath or solemn affirma-

tion as aforesaid, their account of the bankrupt's estate and effects, and what upon the balance thereof shall appear to be in their hands shall, by like order of the commissioners, be forthwith divided amongst such of the bankrupt's creditors as shall have made due proof of their debts, in proportion to their several and respective debts, which second dividend shall be final, unless any suit at law or in equity be pending, or any part of the estate standing out that could not have been disposed of, or that the major part of the creditors shall not have agreed to be sold or disposed of, or unless some other or future estate or effects of the bankrupt shall afterwards come to or vest in the said assignees, in which cases the said assignees shall, as soon as may be, convert such future or other estate and effects into money, and shall within two months after the same be converted into money, by like order of the commissioners, divide the same among such bankrupt's creditors as shall have made due proof of their debt under such commission.

§ 31. And be it further enacted, That in the distribution of the bankrupt's effects there shall be paid to every one of the creditors a portion-rate according to the amount of their respective debts, so that every creditor having security for his debt by judgment, statute, recognizance, or specialty, or having an attachment under any of the laws of the individual States, or of the United States, on the estate of such bankrupt, (Provided, there be no execution executed upon any of the real or personal estate of such bankrupt before the time he or she became bankrupts) shall not be relieved upon any such judgment, statute, recognizance, specialty or attachment, for more than a ratable part of his debt, with the other creditors of the bankrupt.

§ 32. And be it further enacted, That the assignees shall keep one or more distinct book or books of account, wherein he or they shall duly enter all sums of money or effects which he or they shall have received or got into his or their possession, of the said bankrupt's estate, to which books of account every creditor who shall have proved his or her debt shall, at all reasonable times, have free resort and inspect the same as often as he or she shall think fit.

§ 33. And be it further enacted, That every bankrupt, not being in prison or custody, shall at all times after his surrender be bound to attend the assignees upon every reasonable notice, in writing, for that purpose, given or left at the usual place of his or her abode, in order to assist in making out the accounts of the said bankrupt's estate and effects, and to attend any court of record, to be examined touching the same, or such other business as the said assignee shall judge necessary, for which he shall receive three dollars per day.

§ 34. And be it further enacted, That all and every person and persons who shall become bankrupt as aforesaid, and who shall within the time limited by this act surrender him or herself to the commissioners, and in all things conform as in and by this act is directed,

shall be allowed five per cent. upon the net produce of all the estate that shall be recovered in and received, which shall be paid unto him or her by the assignee or assignees, in case the net produce of such estate, after such allowance made, shall be sufficient to pay the creditors of said bankrupt who shall have proved their debts under such commission the amount of fifty per cent. on their said debts, respectively, and so as the said five per cent. shall not exceed, in the whole, the sum of five hundred dollars; and in case the net produce of the said estate shall, over and above the allowance hereafter mentioned, be sufficient to pay the said creditors seventy-five per cent. on the amount of their said debts, respectively, that then the said bankrupt shall be allowed ten per cent. on the amount of such net produce, to be paid as aforesaid, so as such ten per cent. shall not, in the whole, exceed the sum of eight hundred dollars; and every such bankrupt shall be discharged from all debts by him or her due or owing at the time he or she became bankrupt, and all which were or might have been proved under the said commission; and in case any such bankrupt shall afterwards be arrested or prosecuted or impleaded, for or on account of any of the said debts, such bankrupt may appear without bail, and may plead the general issue, and give this act and the special matter in evidence. And the certificate of such bankrupt's conforming, and the allowance thereof, according to the directions of this act, shall be, and shall be allowed to be, sufficient evidence, prima facie, of the party's being a bankrupt within the meaning of this act, and of the commission and other proceedings precedent to the obtaining such certificate, and a verdict shall thereupon pass for the defendant, unless the plaintiff in such action can prove the said certificate was obtained unfairly and by fraud, or unless he can make appear any concealment of estate or effects by such bankrupt to the value of one hundred dollars. Provided, That no such discharge of a bankrupt shall release or discharge any person who was a partner with such bankrupt at the time he or she became bankrupt, or who was then jointly held or bound with such bankrupt for the same debt or debts from which such bankrupt was discharged as aforesaid.

§ 35. Provided always, and be it further enacted, That if the net proceeds of the bankrupt's estate, so to be discovered, recovered and received, shall not amount to so much as will pay all and every of the creditors of the said bankrupt who shall have proved their debts under the said commission, the amount of fifty per cent. on their debts respectively, after all charges first deducted, that then and in such case the bankrupt shall not be allowed five per centum on such estate as shall be recovered in, but shall have and be paid by the assignees so much money as the commissioners shall think fit to allow, not more than three hundred dollars, nor exceeding three per centum on the net proceeds of the said bankrupt's estate.

§ 36. Provided also, and be it further enacted, That no person becoming a bankrupt according to the intent and provisions of this act

shall be entitled to a certificate of discharge, or to any of the benefits of the act, unless the commissioners shall certify under their hands to the judge of the district within which such commission issues that such bankrupt hath made a full discovery of his or her estate and effects, and in all things conformed him or herself to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of the said bankrupt's estate and effects, and in all things conformed him or herself to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of the said bankrupt's estate and effects; or unless the said judge should be of opinion that the said certificate was unreasonably denied by the commissioners; and unless two-thirds, in number and in value, of the creditors of the bankrupt, who shall be creditors for not less than fifty dollars respectively, and who shall have duly proved their debts under the said commission, shall sign such certificate to the judge, and testify their consent to the allowance of a certificate of discharge in pursuance of this act; which signing and consent shall be also certified by the commissioners; but the said commissioners shall not certify the same till they have proof by affidavit or affirmation, in writing, of such creditors, or of the persons respectively authorized for that purpose signing the said certificate; which affidavit or affirmation, together with the letter or power of attorney to sign, shall be laid before the judge of the district within which such commission issues, in order for the allowing the certificate of discharge, and the said certificate shall not be allowed unless the bankrupt make oath or affirmation in writing that the certificate of the commissioners and consent of the creditors thereunto were obtained fairly and without fraud; and any of the creditors of the said bankrupt are allowed to be heard, if they shall think fit, before the respective persons aforesaid, against the making or allowing of such certificates by the commissioners or judge.

§ 37. And be it further enacted, That if any creditor, or pretended creditor, of any bankrupt shall exhibit to the commissioners any fictitious or false debt or demand, with intent to defraud the real creditors of such bankrupt, and the bankrupt shall refuse to make discovery thereof and suffer the fair creditors to be imposed upon, he shall lose all title to the allowance upon the amount of his effects and to a certificate of discharge as aforesaid, nor shall he be entitled to the said allowance or certificate if he has lost at any one time fifty dollars, or in the whole three hundred dollars, after the passing of this act and within twelve months before he became a bankrupt, by any manner of gaming or wagering whatever.

§ 38. And be it further enacted, That if any bankrupt who shall have obtained his certificate shall be taken in execution or detained in prison on account of any debts owing before he became a bankrupt,

by reason that judgment was obtained before such certificate was allowed, it shall be lawful for any of the judges of the court wherein judgment was so obtained, or for any court, judge or justice, within the district in which such bankrupt shall be detained, having powers to award or allow the writ of habeas corpus, on such bankrupt producing his certificate so as aforesaid allowed, to order any sheriff or gaoler who shall have such bankrupt in custody to discharge such bankrupt without fee or charge, first giving reasonable notice to the plaintiff, or his attorney, of the motion for such discharge.

§ 39. And be it further enacted, That every person who shall have bona-fide given credit to or taken securities, payable at future days, from persons who are or shall become bankrupts, not due at the time of such persons becoming bankrupt, shall be admitted to prove their debts and contracts as if they were payable presently, and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much per centum per annum, as is equal to the lawful interest of the State where the debt was payable, and the obligee of any bottomry or respondentia bond, and the assured in any policy of insurance, shall be admitted to claim, and after the contingency or loss to prove the debt thereon, in like manner as if the same had happened before issuing the commission; and the bankrupt shall be discharged from such securities as if such money had been due and payable before the time of his or her becoming bankrupt; and such creditors may petition for a commission, or join in petitioning.

§ 40. And be it further enacted, That in case any person committed by the commissioners' warrant shall obtain a habeas corpus, in order to be discharged, and there shall appear any insufficiency in the form of the warrant, it shall be lawful for the court or judge before whom such party shall be brought by habeas corpus, by rule or warrant, to commit such persons to the same prison, there to remain until he shall conform as aforesaid, unless it shall be made to appear that he had fully answered all lawful questions put to him by the commissioners; or in case such person was committed for not signing his examination, unless it shall appear that the party had good reason for refusing to sign the same, or that the commissioners had exceeded their authority in making such commitment; and in case the gaoler to whom such person shall be committed shall wilfully or negligently suffer such person to escape, or go without the doors or walls of the prison, such gaoler shall for such offense, being convicted thereof, forfeit a sum not exceeding three thousand dollars, for the use of the creditors.

§ 41. And be it further enacted, That the gaoler shall, upon the request of any creditor having proved his debt and showing a certificate thereof under the hands of the commissioners, which the commissioners shall give without fee or reward, produce the person so committed; and in case such gaoler shall refuse to show such person

to such creditor requesting the same, such person shall be considered as having escaped, and the gaoler or sheriff so refusing shall be liable as for a wilful escape.

§ 42. And be it further enacted, That where it shall appear to the said commissioners that there hath been mutual credit given by the bankrupt and any other person, or mutual debts between them at any time before such person became bankrupt, the assignee or assignees of the estate shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side on the balance of such account after such set off, and no more, shall be claimed or paid on either side respectively.

§ 43. And be it further enacted, That it shall and may be lawful to and for the assignee or assignees of any bankrupt's estate and effects, under the direction of the commissioners, and by and with the consent of the major part in value of such of the said bankrupt's creditors as shall have duly proved their debts under the commission, and shall be present at any meeting of the said creditors, to be held in pursuance of due and public notice for that purpose given, to submit any difference or dispute for, on account of, or by reason or means of, any matter, cause, or thing whatsoever, relating to such bankrupt, or to his or her estate or effects, to the final end and determination of arbitrators to be chosen by the said commissioners, and the major part in value of such creditors as shall be present at such meeting as aforesaid, in such manner as the said assignee or assignees, under the direction and with the consent aforesaid, shall think fit and can agree; and the same shall be binding on the several creditors of the said bankrupt, and the said assignee or assignees are hereby indemnified for what they shall fairly do, according to the directions aforesaid.

§ 44. And be it further enacted, That the assignees shall be, and hereby are, vested with full power to dispose of all the bankrupt's estate, real and personal, at public auction or vendue, without being subject to any tax, duty, imposition, or restriction, any law to the contrary notwithstanding.

§ 45. And be it further enacted, That if after any commission of bankruptcy sued forth, the bankrupt happen to die before the commissioners shall have distributed the effects, or any part thereof, the commissioners shall nevertheless proceed to execute the commission as fully as they might have done if the party were living.

§ 46. And be it further enacted, That where any commission of bankruptcy shall be delivered to the commissioners therein named, to be executed, it shall and may be lawful for them before they take the oath or affirmation of qualification, to demand and take from the creditor or creditors prosecuting such commission a bond with one good security, if required, in the penalty of one thousand dollars, conditioned for the payment of the costs, charges and expenses which shall arise and accrue upon the prosecution of the said commission:

Provided always, that the expenses so as aforesaid to be secured and paid by the petitioning creditor or creditors shall be repaid to him or them by the commissioner or assignees out of the first monies arising from the bankrupt's estate or effects, if so much be received therefrom.

§ 47. And be it further enacted, That the district judges in each district respectively shall fix a rate of allowance to be made to the commissioners of bankruptcy, as compensation of services to be rendered under the commission, and it shall be lawful for any creditor, by petition to the district judge, to except to any charge contained in the account of the commissioners: and the said judge, after hearing the commissioners, may in a summary way decide upon the validity of such exception.

§ 48. And be it further enacted, That all penalties given by this act for the benefit of the creditors shall be recovered by the assignee or assignees by action of debt, and the money so recovered, the charges of suit being deducted, shall be distributed towards payment of the creditors.

§ 49. And be it further enacted, That if any action shall be brought against any commissioner, or assignee or other person, having authority under the commission, for anything done and performed by force of this act, the defendant may plead the general issue, and give this act and the special matter in evidence; and in case of a non-suit, discontinuance, or verdict or judgment for him, he shall recover double costs.

§ 50. And be it further enacted, That if any estate, real or personal, shall descend, revert to, or become vested in any person after he or she shall be declared a bankrupt, and before he or she shall obtain a certificate signed by the judge as aforesaid, all such estate shall, by virtue of this act, be vested in the said commissioners, and shall be by them assigned and conveyed to the assignee or assignees in fee simple or otherwise, in like manner as above directed, with the estate of the said bankrupt, at the time of the bankruptcy, and the proceeds thereof shall be divided among the creditors.

§ 51. And be it further enacted, That the said commissioners shall, once in every year, carefully file in the clerk's office of the district court all the proceedings had in every case before them, and which shall have been finished, including the commissions, examinations, dividends, entries and other determinations of the said commissioners, in which office the final certificate of the said bankrupt may also be recorded; all which proceedings shall remain of record in the said office, and certified copies thereof shall be admitted as evidence in all courts, in like manner as the copies of the proceedings of the said district court are admitted in other cases.

§ 52. And be it further enacted, That it shall and may be lawful for any creditor of such bankrupt to attend all or any of the examinations of said bankrupt, and the allowance of the final certificate, if he

shall think proper, and then and there to propose interrogatories to be put by the judge or commissioners to the said bankrupt and others, and also to produce and examine witnesses and documents before such judge or commissioners, relative to the subject-matter before them. And in case either the bankrupt or creditor shall think him or herself aggrieved by the determination of the said judge or commissioners, relative to any material fact in the commencement or progress of the said proceedings, or in the allowance of the certificate aforesaid, it shall and may be lawful for either party to petition the said judge, setting forth such facts and the determination thereon, with the complaint of the party, and a prayer for trial by jury to determine the same, and the said judge shall, in his discretion, make order thereon, and reward a venire facias to the marshal of the district, returnable within fifteen days before him, for the trial of the facts mentioned in the said petition, notice whereof shall be given to the commissioners and creditors concerned in the same; at which time the trial shall be had, unless, on good cause shown, the judge shall give farther time, and judgment being entered on the verdict of the jury shall be final on the said facts, and the judge or commissioners shall proceed agreeably thereto.

§ 53. And be it further enacted, That the commissioners before the appointment of assignees, and the assignees after such appointment, may from time to time make such allowance out of the bankrupt's estate until he shall have obtained his final discharge, as in their opinion may be requisite for the necessary support of the said bankrupt and his family.

§ 54. And be it further enacted, That it shall be lawful for the major part in value of the creditors, before they proceed to the choice of assignees, to direct in what manner, with whom and where, the monies arising by and to be received from time to time out of the bankrupt's estate shall be lodged, until the same shall be divided among the creditors, as herein provided; to which direction every such assignee and assignees shall conform as often as three hundred dollars shall be received.

§ 55. And be it further enacted, That every matter and thing by this act required to be done by the commissioners of any bankrupt shall be valid to all intents and purposes, if performed by a majority of them.

§ 56. And be it further enacted, That in all cases where the assignee shall prosecute any debtor of the bankrupt for any debt, duty or demand, the commission, or a certified copy thereof, and the assignment of the commissioners of the bankrupt's estate, shall be conclusive evidence of the issuing the commission and of the person named therein being a trader and bankrupt at the time mentioned therein.

§ 57. And be it further enacted, That every person obtaining a discharge from his debts, by certificate as aforesaid, granted under a

commission of bankruptcy, shall not on any future commission be entitled to any other certificate than a discharge of his person only; unless the net proceeds of the estate and effects of such person so becoming bankrupt a second time shall be sufficient to pay seventy-five per cent. to his or her creditors on the amount of their debts respectively.

§ 58. And be it further enacted, That any creditor of a person against whom a commission of bankruptcy shall have been sued forth, and who shall lay his claim before the commissioners appointed in pursuance of this act, may at the same time declare his unwillingness to submit the same to the judgment of the said commissioners, and his wish that a jury may be impanelled to decide thereon: And in like manner the assignee or assignees of such bankrupt may object to the consideration of any particular claim by the commissioners, and require that the same should be referred to a jury. In either case such objection and request shall be entered on the books of the commissioners, and thereupon an issue shall be made up between the parties, and a jury shall be impanneled, as in other cases, to try the same in the circuit court for the district in which such bankrupt has usually resided. The verdict of such jury shall be subject to the control of the court, as in suits originally instituted in the said court, and when rendered, if not set aside by the said court, shall be certified to the commssioners, and shall ascertain the amount of any such claim, and such creditor or creditors shall be considered in all respects as having proved their debts under the commission.

§ 59. And be it further enacted, That the lands and effects of any person becoming bankrupt may be sold on such credit, and on such security, as a major part in value of the creditors may direct: Provided, nothing herein contained shall be allowed so to operate as to retard the granting the bankrupt's certificate.

§ 60. And be it further enacted, That if any person becoming bankrupt shall be in prison, it shall be lawful for any creditor or creditors, at whose suit he or she shall be in execution, to discharge him or her from custody, or if such creditor or creditors shall refuse to do so, the prisoner may petition the commissioners to liberate him or her, and thereupon, if in the opinion of the commissioners the conduct of such bankrupt shall have been fair, so as to entitle him or her in their opinion to a certificate, when by law such certificate might be given, it shall be lawful for them to direct the discharge of such prisoner, and to enter the same in their books, which being notified to the keeper of the gaol in which such prisoner may be confined shall be a sufficient authority for his or her discharge: Provided, that in either case, such discharge shall be no bar to another execution, if a certificate shall be refused to such bankrupt: And provided also, that it shall be no bar to a subsequent imprisonment of such bankrupt by order of the commissioners, in conformity with the provisions of this act.

§ 61. And be it further enacted, That this act shall not repeal or annul, or be construed to repeal or annul, the laws of any State now in force, or which may be hereafter enacted, for the relief of insolvent debtors, except so far as the same may respect persons who are or may be clearly within the purview of this act, and whose debts shall amount in the cases specified in the second section thereof to the sums herein mentioned. And if any person within the purview of this act shall be imprisoned for the space of three months, for any debt or upon any contract, unless the creditors of such prisoner shall proceed to prosecute a commission of bankruptcy against him or her, agreeably to the provisions of this act, such debtor may and shall be entitled to relief, under any such laws for the relief of insolvent debtors, this act notwithstanding.

§ 62. And be it further enacted, That nothing contained in this law shall in any manner affect the right of preference to prior satisfaction of debts due to the United States as secured or provided by any law heretofore passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States or to any of them.

§ 63. And be it further enacted, That nothing contained in this act shall be taken or construed to invalidate or impair any lien existing at the date of this act upon the lands or chattels of any person who may have become a bankrupt.

§ 64. And be it further enacted, That this act shall continue in force during the term of five years, and from thence to the end of the next session of congress thereafter, and no longer: Provided, that the expiration of this act shall not prevent the complete execution of any commission which may have been previously thereto issued.

Approved, April 4, 1800.

ACT OF FEBRUARY 13, 1801.

An Act to provide for the more convenient organization of the Courts of the United States.

§ 12. The said circuit courts respectively shall have cognizance, concurrently with the district courts, of all cases which shall arise, within their respective circuits, under the act to establish an uniform system of bankruptcy throughout the United States; and each circuit judge, within his respective circuit, shall and may perform, all and singular, the duties enjoined by the said act upon a judge of a district court: and the proceedings under a commission of bankruptcy which shall issue from a circuit judge shall, in all respects, be conformable to the proceedings under a commission of bankruptcy which shall issue from a district judge, mutatis mutandis.

ACT OF APRIL 29, 1802.

An Act to amend the judicial system of the United States.

§ 11. In all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy issued in pursuance of the aforesaid act, entitled "An act to provide for the more convenient organization of the courts of the United States," the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have issued, who is hereby empowered to proceed therein in the same manner and to the same effect as if such commission of bankruptcy had been issued by his order.

ACT OF DECEMBER 19, 1803.

An Act to repeal an act entitled "An act to establish an uniform system of bankruptcy throughout the United States."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act of Congress passed on the fourth day of April, one thousand, eight hundred, entitled "An act to establish an uniform system of bankruptcy throughout the United States," shall be, and the same is hereby, repealed. Provided, nevertheless, that the repeal of the said act shall in no wise affect the execution of any commission of bankruptcy which may have been issued prior to the passing of this act, but every such commission may and shall be proceeded on and fully executed as though this act had not passed.

Approved, December 19, 1803.

BANKRUPTCY ACT OF AUGUST 19, 1841.

An Act to establish a uniform System of Bankruptcy throughout the United States.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, established throughout the United States a uniform system of bankruptcy, as follows: All persons whatsoever, residing in any State, District or Territory of the United States, owing debts which shall not have been created in consequence of a

defalcation as a public officer; or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, who shall, by petition, setting forth to the best of his knowledge and belief a list of his or their creditors, their respective places of residence, and the amount due to each, together with an accurate inventory of his or their property, rights and credits, of every name, kind and description, and the location and situation of each and every parcel and portion thereof, verified by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation, apply to the proper court, as hereinafter mentioned, for the benefit of this act, and therein declare themselves to be unable to meet their debts and engagements, shall be deemed bankrupts within the purview of this act, and may be so declared accordingly by a decree of such court. All persons, being merchants, or using the trade of merchandise, all retailers of merchandise, and all bankers, factors, brokers, underwriters or marine insurers, owing debts to the amount of not less than two thousand dollars, shall be liable to become bankrupts within the true intent and meaning of this act, and may, upon the petition of one or more of their creditors, to whom they owe debts amounting in the whole to not less than five hundred dollars, to the appropriate court, be so declared accordingly, in the following cases, to wit: whenever such person, being a merchant, or actually using the trade of merchandise, or being a retailer of merchandise, or being a banker, factor, broker, underwriter, or marine insurer, shall depart from the State, District or Territory, of which he is an inhabitant, with intent to defraud his creditors; or shall conceal himself to avoid being arrested, or shall willingly and fraudulently procure himself to be arrested, or his goods and chattels, lands or tenements, to be attached, distrained, sequestered, or taken in execution; or shall remove his goods, chattels and effects, or conceal them to prevent their being levied upon or taken in execution, or by other process; or make any fraudulent conveyance, assignment, sale, gift or other transfer of his lands, tenements, goods or chattels, credits or evidence of debt: Provided, however, That any person so declared a bankrupt, at the instance of a creditor, may, at his election, by petition to such court within ten days after its decree, be entitled to a trial by jury before such court, to ascertain the fact of such bankruptcy; or if such person shall reside at a great distance from the place of holding such court, the said judge, in his discretion, may direct such trial by jury to be had in the county of such person's residence, in such manner and under such directions as the court may prescribe and give; and all such decrees passed by such court, and not so re-examined, shall be deemed final and conclusive as to the subject-matter thereof.

§ 2. And be it further enacted, That all future payments, securities, conveyances, or transfers of property, or agreement made or given

by any bankrupt in contemplation of bankruptcy, and for the purpose of giving any creditor, indorser, surety, or other person, any preference or priority over the general creditors of such bankrupts; and all other payments, securities, conveyances, or transfers of property, or agreements made or given by such bankrupt in contemplation of bankruptcy, to any person or persons whatever, not being a bona-fide creditor or purchaser, for a valuable consideration, without notice, shall be deemed utterly void, and a fraud upon this act; and the assignee under the bankruptcy shall be entitled to claim, sue for, recover, and receive, the same as part of the assets of the bankruptcy; and the person making such unlawful preferences and payments shall receive no discharge under the provisions of this act: Provided, That all dealings and transactions by and with any bankrupt, bona-fide made and entered into more than two months before the petition filed against him or by him, shall not be invalidated or affected by this act: Provided, That the other party to any such dealings or transactions had no notice of a prior act of bankruptcy, or of the intention of the bankrupt to take the benefit of this act. And in case it shall be made to appear to the court, in the course of the proceedings in bankruptcy, that the bankrupt, his application being voluntary, has, subsequent to the first day of January last, or at any other time, in contemplation of the passage of a bankrupt law, by assignments or otherwise, given or secured any preference to one creditor over another, he shall not receive a discharge unless the same be assented to by a majority in interest of those of his creditors who have not been so preferred: And provided also, That nothing in this act contained shall be construed to annul, destroy or impair, any lawful rights of married women, or minors, or any liens, mortgages, or other securities, on property, real or personal, which may be valid by the laws of the States respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act.

§ 3. And be it further enacted, That all the property, and rights of property, of every name and nature, and whether real, personal or mixed, of every bankrupt, except as is hereinafter provided, who shall, by a decree of the proper court, be declared to be a bankrupt within this act, shall, by mere operation of law, ipso facto, from the time of such decree, be deemed to be divested out of such bankrupt, without any other act, assignment or other conveyance whatsoever; and the same shall be vested, by force of the same decree, in such assignee as from time to time shall be appointed by the proper court for this purpose, which power of appointment and removal such court may exercise at its discretion, toties quoties; and the assignee so appointed shall be vested with all the rights, titles, powers and authorities to sell, manage and dispose of the same, and to sue for and defend the same, subject to the orders and directions of such court, as fully, to all intents and purposes, as if the same were vested in or might be exercised by such bankrupt before or at the time of his

bankruptcy declared as aforesaid; and all suits in law or in equity then pending, in which such bankrupt is a party, may be prosecuted and defended by such assignee to its final conclusion, in the same way and with the same effect as they might have been by such bankrupt; and no suit commenced by or against any assignee shall be abated by his death or removal from office, but the same may be prosecuted or defended by his successor in the same office: Provided, however, That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of three hundred dollars; and, also, the wearing apparel of such bankrupt, and that of his wife and children; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of said court.

§ 4. And be it further enacted, That every bankrupt who shall bona-fide surrender all his property, and rights of property, with the exception before mentioned, for the benefit of his creditors, and shall fully comply with and obey all the orders and directions which may from time to time be passed by the proper court, and shall otherwise conform to all the requisitions of this act, shall (unless a majority in number and value of his creditors who have proved their debts shall file their written dissent thereto) be entitled to a full discharge from all his debts, to be decreed and allowed by the court which has declared him a bankrupt, and a certificate thereof granted him by such court accordingly, upon his petition filed for such purpose; such discharge and certificate not, however, to be granted until after seventy days' notice in some public newspaper, designated by such court, to all creditors who have proved their debts, and other persons in interest, to appear at a particular time and place, to show cause why such discharge and certificate shall not be granted; at which time and place any such creditors, or other persons in interest, may appear and contest the right of the bankrupt thereto: Provided, That in all cases where the residence of the creditor is known, a service on him personally, or by letter addressed to him at his known usual place of residence, shall be prescribed by the court, as in their discretion shall seem proper, having regard to the distance at which the creditor resides from such court. And if any such bankrupt shall be guilty of any fraud or wilful concealment of his property or rights of property, or shall have preferred any of his creditors contrary to the provisions of this act, or shall wilfully omit or refuse to comply with any orders or directions of such court, or to conform to any other requisites of this act, or shall, in the proceedings under this act, admit a false or fictitious debt against his estate, he shall not be entitled to any such discharge or certificate; nor shall any person, being a merchant, banker, factor, underwriter, broker, or

marine insurer, be entitled to any such discharge or certificate, who shall become bankrupt, and who shall not have kept proper books of account, after the passing of this act; nor any person who, after the passing of this act, shall apply trust funds to his own use: Provided, That no discharge of any bankrupt under this act shall release or discharge any person who may be liable for the same debt as a partner, joint contractor, indorser, surety, or otherwise, for or with the bankrupt. And such bankrupt shall at all times be subject to examination, orally, or upon written interrogatories, in and before such court, or any commission appointed by the court therefor, on oath, or, if conscientiously scrupulous of taking an oath, upon his solemn affirmation, in all matters relating to such bankruptcy, and his acts and doings, and his property and rights of property, which, in the judgment of such court, are necessary and proper for the purposes of justice; and if, in any such examination, he shall wilfully and corruptly answer, or swear, or affirm, falsely, he shall be deemed guilty of perjury, and shall be punishable therefor in like manner as the crime of perjury is now punishable by the laws of the United States; and such discharge and certificate, when duly granted, shall in all courts of justice be deemed a full and complete discharge of all debts, contracts and other engagements of such bankrupt which are provable under this act, and shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever, and the same shall be conclusive evidence of itself in favor of such bankrupt, unless the same shall be impeached for some fraud or wilful concealment by him of his property or rights of property, as aforesaid, contrary to the provisions of this act, on prior reasonable notice specifying in writing such fraud or concealment; and if, in any case of bankruptcy, a majority in number and value of the creditors who shall have proved their debts at the time of hearing of the petition of the bankrupt for a discharge, as hereinbefore provided, shall at such hearing file their written dissent to the allowance of a discharge and certificate to such bankrupt, or if, upon such hearing, a discharge shall not be decreed to him, the bankrupt may demand a trial by jury upon a proper issue to be directed by the court, at such time and place and in such manner as the court may order; or he may appeal from that decision at any time within ten days thereafter to the circuit court next to be held for the same district, by simply entering in the district court, or with the clerk thereof, upon record, his prayer for an appeal. The appeal shall be tried at the first term of the circuit court after it be taken, unless, for sufficient reason, a continuance be granted; and it may be heard and determined by said court summarily, or by a jury, at the option of the bankrupt; and the creditors may appear and object against a decree of discharge and the allowance of the certificate, as hereinbefore provided. And if, upon a full hearing of the parties, it shall appear to the satisfaction of the court, or the jury shall find, that the bankrupt has made a full disclosure and surrender of all his

estate, as by this act required, and has in all things conformed to the directions thereof, the court shall make a decree of discharge, and grant a certificate, as provided in this act.

§ 5. And be it further enacted, That all creditors coming and proving their debts under such bankruptcy, in the manner hereinafter prescribed, the same being bona-fide debts, shall be entitled to share in the bankrupt's property and effects, pro rata, without any priority or preference whatsoever, except only for debts due by such bankrupt to the United States, and for all debts due by him to persons who, by the laws of the United States, have a preference, in consequence of having paid monies as his sureties, which shall be first paid out of the assets; and any person who shall have performed any labor as an operative in the service of any bankrupt shall be entitled to receive the full amount of the wages due to him for such labor, not exceeding twenty-five dollars: Provided, That such labor shall have been performed within six months next before the bankruptcy of his employer; and all creditors whose debts are not due and payable until a future day, all annuitants, holders of bottomry and respondentia bonds, holders of policies of insurances, sureties, indorsers, bail, or other persons, having uncertain or contingent demands against such bankrupt, shall be permitted to come in and prove such debts or claims under this act, and shall have a right, when their debts and claims become absolute, to have the same allowed them; and such annuitants and holders of debts payable in future may have the present value thereof ascertained, under the direction of such court, and allowed them accordingly, as debts in presenti; and no creditor or other person coming in and proving his debt or other claim shall be allowed to maintain any suit at law or in equity therefor, but shall be deemed thereby to have waived all right of action and suit against such bankrupt; and all proceedings already commenced, and all unsatisfied judgments already obtained thereon, shall be deemed to be surrendered thereby; and in all cases where there are mutual debts or mutual credits between the parties, the balance only shall be deemed the true debt or claim between them, and the residue shall be deemed adjusted by the set-off; all such proof of debts shall be made before the court decreeing the bankruptcy, or before some commissioner appointed by the court for that purpose; but such court shall have full power to disallow and set aside any debt, upon proof that such debt is founded in fraud, imposition, illegality, or mistake; and corporations to whom any debts are due may make proof thereof by their president, cashier, treasurer, or other officer, who may be specially appointed for that purpose; and in appointing commissioners to receive proof of debts, and perform other duties under the provisions of this act, the said court shall appoint such persons as have their residence in the county in which such bankrupt lives.

§ 6. And be it further enacted, That the district court in every district shall have jurisdiction in all matters and proceedings in bank-

ruptcy arising under this act, and any other act which may hereafter be passed upon the subject of bankruptcy; the said jurisdiction to be exercised summarily, in the nature of summary proceedings in equity; and for this purpose the said district court shall be deemed always open. And the district judge may adjourn any point or question arising in any case in bankruptcy into the circuit court for the district, in his discretion, to be there heard and determined; and for this purpose the circuit court of such district shall also be deemed always open. And the jurisdiction hereby conferred on the district court shall extend to all cases and controversies in bankruptcy arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to all cases and controversies between such creditor or creditors and the assignee of the estate, whether in office or removed; to all cases and controversies between such assignee and the bankrupt, and to all acts, matters and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. And the said courts shall have full authority and jurisdiction to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent the circuit courts may now do in any suit pending therein in equity. And it shall be the duty of the district court in each district, from time to time, to prescribe suitable rules and regulations, and forms of proceedings, in all matters of bankruptcy; which rules, regulations and forms, shall be subject to be altered, added to, revised, or annulled, by the circuit court of the same district, and other rules and regulations and forms substituted therefor; and in all such rules, regulations and forms it shall be the duty of the said courts to make them as simple and brief as practicable, to the end to avoid all unnecessary expenses, and to facilitate the use thereof by the public at large. And the said courts shall, from time to time, prescribe a tariff or table of fees and charges to be taxed by the officers of the court or other persons for services under this act, or any other on the subject of bankruptcy; which fees shall be as low as practicable, with reference to the nature and character of such services.

§ 7. And be it further enacted, That all petitions by any bankrupt for the benefit of this act, and all petitions by a creditor against any bankrupt under this act, and all proceedings in the case to the close thereof, shall be had in the district court within and for the district in which the person supposed to be a bankrupt shall reside, or have his place of business, at the time when such petition is filed, except where otherwise provided in this act. And upon every such petition, notice thereof shall be published in one or more public newspapers printed in such district, to be designated by such court, at least twenty days before the hearing thereof; and all persons interested may appear at the time and place where such hearing is thus to be had, and show cause, if any they have, why the prayer of the said

petitioner should not be granted; all evidence by witnesses to be used in all hearings before such court shall be under oath, or solemn affirmation, when the party is conscientiously scrupulous of taking an oath, and may be oral or by deposition, taken before such court, or before any commissioner appointed by such court, or before any disinterested State judge of the State in which the deposition is taken; and all proof of debts or other claims, by creditors entitled to prove the same under this act, shall be under oath or solemn affirmations, as aforesaid, before such court or commissioner appointed thereby, or before some disinterested State judge of the State where the creditors live, in such form as may be prescribed by the rules and regulations hereinbefore authorized to be made and established by the courts having jurisdiction in bankruptcy. But all such proofs of debts and other claims shall be open to contestation in the proper court having jurisdiction over the proceedings in the particular case in bankruptcy; and as well the assignee as the creditor shall have a right to a trial by jury upon an issue to be directed by such court, to ascertain the validity and amount of such debts or other claims; and the result therein, unless a new trial shall be granted, if in favor of the claims, shall be evidence of the validity and amount of such debts or other claims. And if any person or persons shall falsely and corruptly answer, swear or affirm, in any hearing or on trial of any matter, or in any proceeding in such court in bankruptcy, or before any commissioner, he and they shall be deemed guilty of perjury, and punishable therefor in the manner and to the extent provided by law for other cases.

§ 8. And be it further enacted, That the circuit court within and for the district where the decree of bankruptcy is passed shall have concurrent jurisdiction with the district court of the same district of all suits at law and in equity which may and shall be brought by any assignee of the bankrupt against any person or persons claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to, or vested in, such assignee; and no suit at law or in equity shall, in any case, be maintainable by or against such assignee or by or against any person or persons claiming an adverse interest touching the property and rights of property aforesaid, in any court whatsoever unless the same shall be brought within two years after the declaration and decree of bankruptcy, or after the cause of suit shall first have accrued.

§ 9. And be it further enacted, That all sales, transfers and other conveyances of the assignee of the bankrupt's property and rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy; and all assets received by the assignee in money shall, within sixty days afterwards, be paid into the court, subject to its order respecting its future safekeeping and disposition; and the court may require of such assignee a bond, with at least two sureties, in such sum as it may deem proper,

conditioned for the due and faithful discharge of all his duties, and his compliance with the orders and directions of the court; which bond shall be taken in the name of the United States, and shall, if there be any breach thereof, be sued and suable, under the order of such court, for the benefit of the creditors and other persons in interest.

§ 10. And be it further enacted, That in order to ensure a speedy settlement and close of the proceedings in each case in bankruptcy, it shall be the duty of the court to order and direct a collection of the assets and a reduction of the same to money, and a distribution thereof at as early periods as practicable, consistently with a due regard to the interests of the creditors; and a dividend and distribution of such assets as shall be collected and reduced to money, or so much thereof as can be safely disposed of, consistently with the rights and interests of third persons having adverse claims thereto, shall be made among the creditors who have proved their debts, as often as once in six months from the time of the decree declaring the bankruptcy; notice of such dividends and distribution to be given in some newspaper or newspapers in the district, designated by the court, ten days at least before the order therefor is passed; and the pendency of any suit at law or in equity, by or against such third persons, shall not postpone such division and distribution, except so far as the assets may be necessary to satisfy the same; and in all the proceedings in bankruptcy in each case shall, if practicable, be finally adjusted, settled and brought to a close by the court, within two years after the decree declaring the bankruptcy. And where any creditor shall not have proved his debt until a dividend or distribution shall have been made and declared, he shall be entitled to be paid the same amount, pro rata, out of the remaining dividends or distributions thereafter made, as the other creditors have already received, before the latter shall be entitled to any portion thereof.

§ 11. And be it further enacted, That the assignee shall have full authority, by and under the order and direction of the proper court in bankruptcy, to redeem and discharge any mortgage or other pledge, or deposit, or lien upon any property, real or personal, whether payable in presenti or at a future day, and to tender a due performance of the conditions thereof. And such assignee shall also have authority, by and under the order and direction of the proper court in bankruptcy, to compound any debts or other claims, or securities due or belonging to the estate of the bankrupt; but no such order or direction shall be made until notice of the application is given in some public newspaper in the district, to be designated by the court, ten days at least before the hearing, so that all creditors and other persons in interest may appear and show cause, if any they have, at the hearing, why the order or direction should not be passed.

§ 12. And be it further enacted, That if any person who shall have been discharged under this act, shall afterward become bankrupt, he shall not again be entitled to a discharge under this act, unless his estate shall produce (after all charges) sufficient to pay every cred-

itor seventy-five per cent. on the amount of the debt which shall have been allowed to each creditor.

§ 13. And be it further enacted, That the proceedings in all cases in bankruptcy shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be carefully filed, kept and numbered in the office of the said court, and a docket only, or short memorandum thereof, with the numbers, kept in a book by the clerk of the court; and the clerk of the court, for affixing his name and the seal of the court to any form, or certifying a copy thereof, when required thereto, shall be entitled to receive, as compensation, the sum of twenty-five cents, and no more. And no officer of the court, or commissioner, shall be allowed by the court more than one dollar for taking the proof of any debt or other claim of any creditor or other person against the estate of the bankrupt; but he may be allowed, in addition, his actual travel expenses for that purpose.

§ 14. And be it further enacted, That where two or more persons, who are partners in trade, become insolvent, an order may be made in the manner provided in this act, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners, upon which order all the joint stock and property of the company, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are herein exempted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignees shall also keep separate accounts of the joint stock or property of the company, and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignees the whole of the expenses and disbursements paid by them, the net proceeds of the joint stock shall be appropriated to pay the creditors of the company, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock, for the payment of the joint creditors; and if there shall be any balance of the joint stock, after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner, as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone.

§ 15. And be it further enacted, That a copy of any decree of bankruptcy, and the appointment of assignees, as directed by the third section of this act, shall be recited in every deed of lands belonging to the bankrupt, sold and conveyed by any assignees under and by virtue of this act; and that such recital, together with certified copy of such order, shall be full and complete evidence both of the bankruptcy and assignment therein recited, and supersede the necessity of any other proof of such bankruptcy and assignment to validate the said deed; and all deeds containing such recital, and supported by such proof, shall be as effectual to pass the title of the bankrupt, of, in and to, the lands therein mentioned and described, to the purchaser, as fully to all intents and purposes, as if made by such bankrupt himself immediately before such order.

§ 16. And be it further enacted, That all jurisdiction, power and authority, conferred upon and vested in the district court of the United States by this act, in cases in bankruptcy, are hereby conferred upon and vested in the circuit court of the United States for the District of Columbia, and in and upon the supreme or superior courts of any of the Territories of the United States, in cases in bankruptcy, where the bankrupt resides in the said District of Columbia, or in either of the said Territories.

§ 17. And be it further enacted, That this act shall take effect from and after the first day of February next.

Approved, August 19, 1841.

ACT OF MARCH 3, 1843.

An Act to Repeal the Bankrupt Act.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved on the nineteenth day of August, eighteen hundred and forty-one, be, and the same is hereby repealed: Provided, That this act shall not affect any case or proceeding in bankruptcy commenced before the passage of this act, or any pains, penalties or forfeitures incurred under the said act; but every such proceeding may be continued to its final consummation in like manner as if this act had not been passed.

Approved, March 3, 1843.

THE BANKRUPT ACT OF 1867 AND AMENDMENTS.

Chapter CLXXVI.

An act to establish a uniform system of bankruptcy throughout the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several district courts of the United States be, and they hereby are, constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. The said courts shall be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time, and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court. And the jurisdiction hereby conferred shall extend to all cases and controversies arising between the bankrupt and any creditor or creditors, who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities and conflicting interests of all parties; and to the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. The said courts shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity. Said courts may sit for the transaction of business in bankruptcy, at any place in the district, of which place and the time of holding court they shall

have given notice, as well as at the places designated by law for holding such courts.

§ 2. And be it further enacted, That the several circuit courts of the United States, within and for the districts where the proceedings in bankruptcy shall be pending, shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case in a court of equity. The powers and jurisdiction hereby granted may be exercised either by said court or by any justice thereof in term time or vacation. Said circuit courts shall also have concurrent jurisdiction with the district courts of the same district of all suits at law or in equity which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee; but no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued, for or against such assignee: Provided, That nothing herein contained shall revive a right of action barred at the time such assignee is appointed.

OF THE ADMINISTRATION OF THE LAW IN COURTS OF BANKRUPTCY.

§ 3. And be it further enacted, That it shall be the duty of the judges of the district courts of the United States, within and for the several districts, to appoint in each congressional district in said districts, upon the nomination and recommendation of the chief justice of the Supreme Court of the United States, one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act. No person shall be eligible to such appointment unless he be a counsellor of said court, or of some one of the courts of record of the state in which he resides. Before entering upon the duties of his office, every person so appointed a register in bankruptcy shall give a bond to the United States, with condition that he will faithfully discharge the duties of his office, in a sum not less than one thousand dollars, to be fixed by said court, with sureties satisfactory to said court, or to either of the

said justices thereof; and he shall, in open court, take and subscribe the oath prescribed in the act entitled "an act to prescribe an oath of office, and for other purposes," approved July second, eighteen hundred and sixty-two, and also that he will not, during his continuance in office, be, directly or indirectly, interested in or benefitted by the fees or emoluments arising from any suit or matter pending in bankruptcy, in either the district or circuit court in his district.

§ 4. And be it further enacted, That every register in bankruptcy, so appointed and qualified, shall have power, and it shall be his duty, to make adjudication of bankruptcy, to receive the surrender of any bankrupt, to administer oaths in all proceedings before him, to hold and preside at meetings of creditors, to take proof of debts, to make all computations of dividends, and all orders of distribution, and to furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case, to audit and pass accounts of assignees, to grant protection, to pass the last examination of any bankrupt in cases whenever the assignee or a creditor do not oppose, and to sit in chambers and despatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the district judge shall in any particular matter direct; and he shall also make short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute-book to be kept in his office, and any register of the court may act for any other register thereof: Provided, however, That nothing in this section contained shall empower a register to commit for contempt, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge; but in all matters where an issue of fact or of law is raised and contested by any party to the proceedings before him, it shall be his duty to cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the judge. No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in any appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy, nor be interested in the fees or

emoluments arising from either of said trusts. The fees of said registers, as established by this act, and by general rules and orders required to be framed under it, shall be paid to them by the parties for whom the services may be rendered in the course of proceedings authorized by this act.

§ 5. And be it further enacted, That the judge of the district court may direct a register to attend at any place within the district for the purpose of hearing such voluntary applications under this act as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any bankruptcy or other proceedings under this act; and the traveling and incidental expenses of such register, and of any clerk or other officer attending him, incurred in so acting, shall be settled by said court in accordance with the rules prescribed under the tenth section of this act, and paid out of the assets of the estate in respect of which such register has so acted; or if there be no such assets, or if the assets shall be insufficient, then such expenses shall form a part of the costs in the case or cases in which the register shall have acted in such journey, to be apportioned by the judge, and such register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the production of books, papers and documents: Provided always, That all depositions of persons and witnesses taken before said register, and all acts done by him, shall be reduced to writing, and be signed by him, and shall be filed in the clerk's office as part of the proceedings. Such register shall be subject to removal by the judge of the district court, and all vacancies occurring by such removal, or by resignation, change of residence, death or disability, shall be promptly filled by other fit persons, unless said court shall deem the continuance of the particular office unnecessary.

§ 6. And be it further enacted, That any party shall, during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the judge at chambers or in open court. In any bankruptcy, or any other pro-

ceedings within the jurisdiction of the court, under this act, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the court, and the judgment of the court shall be final unless it be agreed and stated in such special case that either party may appeal, if, in such case, an appeal is allowed by this act. The parties may also, if they think fit, agree, that upon the question or questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered, or transferred by one of such parties to the other of them either with or without costs.

§ 7. And be it further enacted, That parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena, and all persons wilfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury. If any person examined before a register shall refuse or decline to answer, or to swear to or sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question or to sign such examination, and such person shall also be liable to be punished for contempt.

OF APPEALS AND PRACTICE.

§ 8. And be it further enacted, That appeals may be taken from the district to the circuit courts in all cases in equity, and writs of error may be allowed to said circuit courts from said district courts in cases at law under the jurisdiction created by this act, when the debt or damages claimed amount to more than five hundred dollars, and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim may appeal from the decision of the district court to the circuit court from the same district; but no appeal shall be allowed in any case from the

district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from. The appeal shall be entered at the term of the circuit court which shall be first held within and for the district next after the expiration of ten days from the time of claiming the same. But if the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken; and no appeal shall be allowed unless the appellant at the time of claiming the same shall give bond in manner now required by law in cases of such appeals. No writ of error shall be allowed unless the party claiming it shall comply with the statutes regulating the granting of such writs.

§ 9. And be it further enacted, That in cases arising under this act, no appeal or writ of error shall be allowed in any case from the circuit courts to the Supreme Court of the United States, unless the matter in dispute in such case shall exceed two thousand dollars.

§ 10. And be it further enacted, That the justices of the Supreme Court of the United States, subject to the provisions of this act, shall frame general orders for the following purposes: —

For regulating the practice and procedure of the district courts in bankruptcy, and the several forms of petitions, orders, and other proceedings to be used in said courts in all matters under this act;

For regulating the duties of the various officers of said courts;

For regulating the fees payable and the charges and costs to be allowed, except such as are established by this act or by law, with respect to all proceedings in bankruptcy before said courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings;

For regulating the practice and procedure upon appeals;

For regulating the filing, custody, and inspection of records;

And generally for carrying the provisions of this act into effect.

After such general orders shall have been so framed, they or any of them may be rescinded or varied, and other general orders may be framed in manner aforesaid; and all such general orders so framed shall from time to time be reported to congress, with such suggestions as said justices may think proper.

VOLUNTARY BANKRUPTCY — COMMENCEMENT OF PROCEEDINGS.

§ 11. And be it further enacted, That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next immediately preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors and his desire to obtain the benefit of this act, and shall annex to his petition a schedule, verified by oath before the court or before a register in bankruptcy, or before one of the commissioners of the circuit court of the United States, containing a full and true statement of all his debts, and, as far as possible, to whom due, with the place of residence of each creditor, if known to the debtor, and if not known the fact to be so stated, and the sum due to each creditor; also, the nature of each debt or demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued, and a statement of any existing mortgage, pledge, lien, judgment, collateral or other security given for the payment of the same; and shall also annex to his petition an accurate inventory, verified in like manner, of all his estate, both real and personal, assignable under this act, describing the same and stating where it is situated, and whether there are any, and if so, what incumbrances thereon, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt: Provided, That all citizens of the United States petitioning to be declared bankrupt shall on filing such petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the district court, or, if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies; to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the debtor's petition,

excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court: And provided further, That no mortgage of any vessel or of any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any state, shall be invalidated or affected hereby; and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patents and patent rights and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention, or of injury to the property of the bankrupt, and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might or could have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate debts and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been presented or defended by such bankrupt; and a copy, duly certified by the clerk of the court, under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as hereinbefore mentioned; but no property held by the bankrupt in trust shall pass by such assignment. No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; and no suit in which the assignee is a party shall be abated by his death or re-

moval from office; but the same may be prosecuted and defended by his successor, or by the surviving or remaining assignee, as the case may be. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge of deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien or other incumbrances. The debtor shall also, at the request of the assignee and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper to enable the assignee to possess himself fully of all the assets of the bankrupt. The assignee shall immediately give notice of his appointment, by publication at least once a week for three successive weeks in such newspapers as shall for that purpose be designated by the court, due regard being had to their general circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts.

§ 15. And be it further enacted, That the assignee shall demand and receive, from any and all persons holding the same, all the estate assigned, or intended to be assigned, under the provisions of this act; and he shall sell all such incumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale as will, in its opinion, prove to the interest of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

§ 16. And be it further enacted, That the assignee shall have the like remedy to recover all said estate, debts and effects in his own name, as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If, at the time of the commencement of proceedings in bankruptcy, an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment,

the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving or remaining or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee a certified copy of the assignment made to him by the judge or register shall be conclusive evidence of his authority to sue.

§ 17. And be it further enacted, That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge or a register of said court, or may authorize the same to be deposited in any convenient bank upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon. He shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the court. He shall be allowed, and may retain out of money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court. He may, under the direction of the court, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him, and the other party to the controversy, and may, under such direction, compound and settle any such controversy, by agreement with the other party, as he thinks proper and most for the interest of the creditors.

§ 18. And be it further enacted, That the court, after due notice and hearing, may remove an assignee for any cause which, in the judgment of the court, renders such removal necessary or expedient.

At a meeting called by order of the court in its discretion for the purpose, or which shall be called upon the application of a majority of the creditors in number and value, the creditors may, with consent of (the) court, remove any assignee by such a vote as is hereinbefore provided for the choice of assignee. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom. Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or at its discretion by an election by the creditors, in the manner hereinbefore provided, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person, as the court shall direct. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen. Any former assignee, his executors or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate. No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

OF DEBTS AND PROOF OF CLAIMS.

§ 19. And be it further enacted, That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of

interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt or to stand in the place of the creditor if he shall have proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such regulations and limitations as may be established by such rules. Where the bankrupt is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods. If any bankrupt shall be liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.

§ 20. And be it further enacted, That, in all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or paid, but no set-off shall be allowed of a claim in its nature not provable against the estate: Provided, That no set-off shall be allowed in favor of any debtor to the bankrupt of a claim purchased by or transferred to him after the filing of the petition. When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess: or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

§ 21. And be it further enacted, That no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced or unsatisfied judgments already obtained thereon, shall be deemed to be discharged and surrendered thereby; and no creditor whose debt is provable under this act shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge, and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy,

but execution shall be stayed as aforesaid. If any bankrupt shall, at the time of adjudication, be liable upon any bill of exchange, promissory note, or other obligation in respect to distinct contracts as a member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader and also (as) a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect to such distinct contracts against the estates respectively liable upon such contracts.

§ 22. And be it further enacted, That all proofs of debts against the estate of the bankrupt, by or in behalf of creditors residing within the judicial district where the proceedings in bankruptcy are pending, shall be made before one of the registers of the court in said district, and by or in behalf of nonresident debtors before any register in bankruptcy in the judicial district where such creditors or either of them reside, or before any commissioner of the circuit court authorized to administer oaths in any district. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation before the proper register or commissioner setting forth the demand, the consideration thereof, whether any and what securities are held therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person, for his use, received any security or satisfaction whatever other than that by him set forth, that the claim was not procured for the purpose of influencing the proceedings under this act, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the said claim or any part thereof, against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor, or any other person in the proceedings under this act, is or shall be in any way affected, influenced, or controlled, and no claim shall be allowed unless all the statements set forth in such deposition shall appear to be true. Such oath or solemn affirmation shall be made by the claimant, testifying of his own knowledge, unless he is absent from the United States or prevented by some other good cause from testifying, in which case the demand may be verified in like

manner by the attorney or authorized agent of the claimant testifying to the best of his knowledge, information, and belief, and setting forth his means of knowledge; or if in a foreign country, the oath of the creditor may be taken before any minister, consul, or vice-consul of the United States; and the court may, if it shall see fit, require or receive further pertinent evidence either for or against the admission of the claim. Corporations may verify their claims by the oath or solemn affirmation of their president, cashier, or treasurer. If the proof is satisfactory to the register or commissioner, it shall be signed by the deponent, and delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts, which books shall be open to the inspection of all the creditors. The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality, or mistake.

§ 23. And be it further enacted, That when a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen. Any person who, after the approval of this act, shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend therefrom until he shall first have surrendered to the assignee all property, money, benefit, or advantage received by him under such preference. The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present.

§ 24. And be it further enacted, That a supposed creditor who takes an appeal to the circuit court from the decision of the district court, rejecting his claim in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof a statement in writing of his claim, setting forth the same, substantially, as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause, as in action at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The final judgment of the court shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee, they shall be allowed out of the estate. A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.

OF PROPERTY PERISHABLE AND IN DISPUTE.

§ 25. And be it further enacted, That when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of; and whenever it appears to the satisfaction of the court that the title to any portion of an estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the

parties in any courts. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.

EXAMINATION OF BANKRUPTS.

§ 26. And be it further enacted, That the court may, on the application of the assignee in bankruptcy, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a register in bankruptcy, for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court. The bankrupt shall at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated; and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of court. If the bankrupt is without the district, and unable to return and personally attend at any of the times or do any of the acts which may be specified or required pursuant to this section, and if it appears that such absence was not caused by wilful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of

the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default. He shall also be at liberty, from time to time, upon oath to amend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown, the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.

OF THE DISTRIBUTION OF THE BANKRUPT'S ESTATE.

§ 27. And be it further enacted, That all creditors whose debts are duly proved and allowed, shall be entitled to share in the bankrupt's property and estate pro rata, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: Provided, That any debt proved by any person liable, as bail, surety, guarantor, or otherwise, for the bankrupt, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and shall also produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the

cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors shall attend such meeting, either in person or by attorney, it shall be the duty of the assignee so to determine. In case a dividend is ordered, the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.

§ 28. And be it further enacted, That the like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of creditors shall then be called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, the same shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors no further meeting shall be called, unless ordered by the court. If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under the direction of the court, sell and assign such debts or other property in such manner as the court shall order. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter. Preparatory to the final dividend, the assignee shall submit his account to the

court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice, and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and if found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars, and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. If by accident, mistake, or other cause, without fault of the assignee, either or both of the said second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held. In the order for a dividend, under this section, the following claims shall be entitled to priority or preference, and to be first paid in full in the following order:—

First. The fees, costs, and expenses of suits, and the several proceedings in bankruptcy under this act, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the state in which the proceedings in bankruptcy are pending, and all taxes and assessments under the laws of such state.

Fourth. Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six

months next preceding the first publication of the notice of proceedings in bankruptcy.

Fifth. All debts due to any persons who, by the laws of the United States, are or may be entitled to a priority or preference, in like manner as if this act had not been passed: Always provided, That nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any state.

OF THE BANKRUPT'S DISCHARGE AND ITS EFFECT.

§ 29. And be it further enacted, That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto, or if he has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or, if, within four months before the commencement of such proceedings, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false

or fraudulent entry in any books of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or if, having knowledge that any person has proved such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account; or if he, or any person in his behalf has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act; and before any discharge is granted, the bankrupt shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this act as a ground for withholding such discharge, or as invalidating such discharge if granted.

§ 30. And be it further enacted, That no person who shall have been discharged under this act, and shall afterward become bankrupt, on his own application shall be again entitled to a discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

§ 31. And be it further enacted, That any creditor opposing the discharge of any bankrupt may file a specification in writing of the grounds of his opposition, and the court may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

§ 32. And be it further enacted, That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court, in substance as follows: —

District Court of the United States, District of :

Whereas has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the day of , on which day the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at , in the said district, this day of , A. D.

[SEAL.]

Judge.

§ 33. And be it further enacted, That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise. And in all proceedings in bankruptcy commenced after one year from the time this act shall go into operation, no discharge shall be granted to a debtor whose assets do not pay fifty per centum of the claims against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claim is filed in the case at or before the time of application for discharge.

§ 34. And be it further enacted, That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth in haec verba, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and (the) regularity of such discharge: Always provided, That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, seting forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt, are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if said court shall find that said fraudulent acts and all of them, set forth as aforesaid, are not proved, or that they were known to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by said proceedings.

PREFERENCES AND FRAUDULENT CONVEYANCES DECLARED VOID.

§ 35. And be it further enacted, That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a

preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be prima facie evidence of fraud. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained to be recovered by the assignee for the benefit of the estate.

BANKRUPTCY OF PARTNERSHIPS AND OF CORPORATIONS.

§ 36. And be it further enacted, That where two or more persons who are partners in trade shall be adjudged bankrupt, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners, a warrant shall issue in the manner provided by this act, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignee shall be chosen by the creditors of the company, and shall also keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.

§ 37. And be it further enacted, That the provisions of this act shall apply to all moneyed business or commercial corporations and joint-stock companies, and that upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators at any legal meeting called for the purpose, or upon the petition of any creditor or creditors of such cor-

poration or company, made and presented in the manner hereinafter provided in respect to debtors, the like proceedings shall be had and taken as are hereinafter provided in the case of debtors; and all the provisions of this act which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of such corporation or company in relation to the same matters concerning the corporation or company, and the money and property thereof. All payments, conveyances, and assignments declared fraudulent and void by this act when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. No allowance or discharge shall be granted to any corporation or joint-stock company, or to any person or officer or member thereof: Provided, That whenever any corporation by proceedings under this act shall be declared bankrupt, all its property and assets shall be distributed to the creditors of such corporations in the manner provided in this act in respect to natural persons.

OF DATES AND DEPOSITIONS.

§ 38. And be it further enacted, That the filing of a petition for adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor; upon which an order may be issued by the court, or by a register in the manner provided in section four, shall be deemed and taken to be the commencement of proceedings in bankruptcy under this act; the proceedings in all cases of bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall in all cases be prima facie evidence of the facts therein stated. Evidence or examination in any of the proceedings under this act may be taken before the court, or a register in bankruptcy, viva voce or in writing, before a commission of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books

and papers, and the giving of testimony in the same manner as in suits in equity in the circuit court.

INVOLUNTARY BANKRUPTCY.

§ 39. And be it further enacted, That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, district, or Territory of which he is an inhabitant, with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of any State, district, or Territory, within which such debtor resides or has property founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of such State, district, or Territory applicable thereto, for a period of seven days; or has been actually imprisoned for more than seven days in a civil action, founded on contract, for the sum of one hundred dollars or upward; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or give any warrant to confess judgment; or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought

within six months after the act of bankruptcy shall have been committed. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this act, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, or that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.

§ 40. And be it further enacted, That upon the filing of the petition authorized by the next preceding section, if it shall appear that sufficient grounds exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted; and may also, by its injunctions, restrain the debtor, and any other person, in the mean time, from making any transfer or disposition of any part of the debtor's property not excepted by this act from the operation thereof and from any interference therewith; and if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest the alleged (bankrupt) and him safely keep, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until the decision of the court upon the petition or the further order of the court, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court. A copy of the petition and of such order to show cause shall be served on such debtor by delivering the same to him personally, or leaving the same at his last or usual place of abode; or, if such debtor cannot be found, or his place of residence ascertained, service shall be made by publication in such manner as the judge may direct. No further proceedings, unless the debtor appear and consent thereto, shall be had until proof shall have been given, to the satisfaction of the court, of such service of publication; and if such proof be not given on the return day of such order, the proceedings shall be adjourned and an order made that the notice be forthwith so served or published.

§ 41. And be it further enacted, That on such return day or adjourned day, if the notice has been duly served or published, or shall

be waived by the appearance and consent of the debtor, the court shall proceed summarily to hear all the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of such alleged bankruptcy; and if upon such hearing or trial, the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens were the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover costs.

§ 42. And be it further enacted, That if the facts set forth in the petition are found to be true, or if default be made by the debtor to appear pursuant to the order, upon due proof of service thereof being made, the court shall adjudge the debtor to be a bankrupt, and, as such, subject to the provisions of this act, and shall forthwith issue a warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his own petition. The order of adjudication of bankruptcy shall require the bankrupt forthwith, or within such number of days, not exceeding five after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory of his estate in the form and verified in the manner required of a petitioning debtor by section thirteen. If the debtor has failed to appear in person, or by attorney, a certified copy of the adjudication shall be forthwith served on him by delivery or publication in the manner hereinbefore provided for the service of the order to show cause; and if the bankrupt is absent or cannot be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain. If the petitioning creditor shall not appear and proceed on the return day, or adjourned day, the court may, upon the petition of any other creditor, to the required amount, proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

OF SUPERSEDING THE BANKRUPT PROCEEDINGS BY ARRANGEMENT.

§ 43. And be it further enacted, That if at the first meeting of creditors, or at any meeting of creditors to be specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three-fourths in value of the creditors whose claims have been proved shall determine and resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt should be wound up and settled, and distribution made among the creditors by trustees, under the inspection and direction of a committee of the creditors, it shall be lawful for the creditors to certify and report such resolution to the court, and to nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it shall appear to the court, after hearing the bankrupt and such creditors as may desire to be heard, that the resolution was duly passed, and that the interests of the creditors will be promoted thereby, it shall confirm the same; and upon the execution and filing, by or on behalf of three-fourths in value of all the creditors whose claims have been proved, of a consent that the estate of the bankrupt be wound up and settled by said trustees according to the terms of such resolution, the bankrupt, or his assignee in bankruptcy, if appointed, as the case may be, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the said trustee or trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done had such resolution not been passed; and such consent and the proceedings thereunder shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor whose debt, if provable, is not proved, as if he had proved it; and the court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors, and the said trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors, and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy under this act: and the said trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such

trustees, shall have power to summon and examine, or (on) oath or otherwise, the bankrupt and any creditor, and any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy under this act; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this act. If the resolution shall not be duly reported, or the consent of the creditors shall not be duly filed, or if, upon its filing, the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for assuming proceedings shall not be reckoned in calculating periods of time prescribed by this act.

PENALTIES AGAINST BANKRUPTS.

§ 44. And be it further enacted, That from and after the passage of this act if any debtor or bankrupt shall, after the commencement of proceedings in bankruptcy, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof out of the district, or otherwise dispose of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay either of them in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with the like intent, or spends any part thereof in gaming; or shall, with intent to defraud, wilfully and fraudulently conceal from his assignee or omit from his schedule any property or effects whatsoever; or if, in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge

or belief thereof; or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before the commencement of proceedings in bankruptcy, under the false color and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud; or shall, with intent to defraud his creditors, within three months next before the commencement of proceedings in bankruptcy, pawn, pledge, or dispose of, otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of the United States, shall be punished by imprisonment, with or without har labor, for a term not exceeding three years.

PENALTIES AGAINST OFFICERS.

§ 45. And be it further enacted, That if any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this act, or under color of doing anything thereunder, wilfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by this act, or which shall be allowed under the authority thereof, such person, when convicted thereof, shall forfeit and pay the sum of not less than three hundred dollars and not exceeding five hundred dollars, and be imprisoned not exceeding three years.

§ 46. And be it further enacted, That if any person shall forge the signature of a judge, register, or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, any such person shall be guilty of felony, and upon conviction thereof shall be liable to a fine of not less than five hundred dollars, and not more than five thousand dollars, and to be imprisoned not more than five years, at the discretion of the court.

FEES AND COSTS.

§ 47. And be it further enacted, That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the registers: —

For issuing every warrant, two dollars.

For each day in which a meeting is held, three dollars.

For each order for a dividend, three dollars.

For every order substituting an arrangement by trust deed for bankruptcy, two dollars.

For every bond with sureties, two dollars.

For every application for any meeting in any matter under this act, one dollar.

For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

For taking depositions, the fees now allowed by law.

For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and, before a warrant issues, the petitioner shall deposit with the senior register of the court, or with the clerk, to be delivered to the register, fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued, shall pay the same, and the court may issue an execution against him to compel payment to the register.

Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees: —

First. For service of warrant, two dollars.

Second. For all necessary travel, at the rate of five cents a mile each way.

Third. For each written note to creditor named in the schedule, ten cents.

Fourth. For custody of property, publication of notices, and other services, his actual and necessary expenses upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of said expenses.

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

The enumeration of the foregoing fees shall not prevent the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in this section in classes of cases to be named in their rules and orders.

OF MEANING OF TERMS AND COMPUTATION OF TIME.

§ 48. And be it further enacted, That the word "assignee," and the word "creditor" shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees of that officer. The word "marshal" shall include the marshal's deputies; the word "person" shall also include "corporation;" and the word "oath" shall include "affirmation." And in all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first, and inclusive of the last day, unless the last day shall fall on a Sunday, Christmas day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the Fourth of July, in which case the time shall be reckoned exclusive of that day also.

§ 49. And be it further enacted, That all the jurisdiction, power, and authority conferred upon and vested in the District Court of the United States by this act in cases in bankruptcy are hereby conferred upon and vested in the Supreme Court of the District of Columbia, and in and upon the supreme courts of the several Territories of the United States, when the bankrupt resides in the said District of Columbia or in either of the said Territories. And in those judicial districts which are not within any organized circuit of the United States, the power and jurisdiction of a circuit court in bankruptcy may be exercised by the district judge.

§ 50. And be it further enacted, That this act shall commence and take effect as to the appointment of the officers created hereby, and the promulgation of rules and general orders, from and after the date of its approval: Provided, That no petition or other proceeding un-

der this act shall be filed, received, or commenced before the first day of June, Anno Domini, eighteen hundred and sixty-seven.

Approved, March 2, 1867.

Chapter CCLVIII.

An Act in amendment of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of second clause of the thirty-third section of said act shall not apply to the cases of proceedings in bankrup(t)cy commenced prior to the first day of January, eighteen hundred and sixty-nine, and the time during which the operation of the provisions of said clause is postponed shall be extended until said first day of January, eighteen hundred and sixty-nine. And said clause is hereby so amended as to read as follows: In all proceedings in bankruptcy commenced after the first day of January, eighteen hundred and sixty-nine, no discharge shall be granted to a debtor whose assets shall not be equal to fifty per centum of the claims proved against his estate upon which he shall be liable as the principal debtor, unless the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as principal debtor, and who shall have proved their claims, be filed in the case at or before the time of the hearing of the application for discharge.

§ 2. And be it further enacted, That said act be further amended as follows: The phrase "presented or defended," in the fourteenth section of said act shall read "prosecuted or defended;" the phrase "non-resident debtors" in line five, section twenty-two, of the act as printed in the statutes at large, shall read "non-resident creditors;" that the word "or" in the next to the last line of the thirty-ninth section of the act shall read "and;" that the phrase "section thirteen" in the forty-second section of said act shall read "section eleven;" and the phrase "or spends any part thereof in gaming" in the forty-fourth section of said act shall read "or shall spend any part thereof in gaming;" and that the words "with the senior register, or" and the phrase "to be delivered to the register" in the forty-seventh section of said act be stricken out.

§ 3. And be it further enacted, That registers in bankruptcy shall have power to administer oaths in all cases and in relation to all

matters in which oaths may be administered by commissioners of the circuit courts of the United States, and such commissioners may take proof of debts in bankruptcy in all cases, subject to the revision of such proofs by the register and by the court according to the provisions of said act.

Approved, July 27, 1868.

Chapter CLXXVII.

An Act to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction conferred upon the supreme courts of the Territories by the act to which this is in amendment may be exercised, upon petitions regularly filed in that court, by either of the justices thereof, while holding the district court in the district in which the petitioner or the alleged bankrupt resides, and said several supreme courts shall have the same supervisory jurisdiction over all acts and decisions of each justice thereof as is conferred upon the circuit courts of the United States over proceedings in the district courts of the United States by the second section of said act.

§ 2. And be it further enacted, That in case of a vacancy in the office of district judge in any district, or in case any district judge shall, from sickness, absence, or other disability, be unable to act, the circuit judge of the district in which such district is included may make, during such disability or vacancy, all necessary rules and orders preparatory to the final hearing of all causes in bankruptcy, and cause the same to be entered or issued, as the case may require, by the clerk of the district court.

Approved, June 30, 1870.

Chapter CCLXII.

An Act in amendment of the act entitled "An act establishing an uniform system of bankruptcy throughout the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the second clause of the thirty-third section of said act, as amended by the first section of an act in amendment thereof, approved July twenty-seven, eighteen hundred and sixty-eight, shall

not apply to those debts from which the bankrupt seeks a discharge which were contracted prior to the first day of January, eighteen hundred and sixty-nine.

§ 2. And be it further enacted, That the clause in the thirty-ninth section of said act which now reads "or who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days," shall be amended so as to read as follows: "Or who, being a banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who has stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days."

Approved, July 14, 1870.

Chapter CCCXXXIX.

An Act to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso in section fourteen of an act approved March second, eighteen hundred and sixty-seven, entitled "An act to establish a uniform system of bankruptcy throughout the United States," be amended by striking out the words "eighteen hundred and sixty-four," and inserting in lieu thereof "eighteen hundred and seventy-one."

Approved, June 8, 1872.

Chapter CCCXL.

An Act to declare the true intent and meaning of section two of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March two, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the States of America in Congress assembled, That the powers and jurisdiction granted to the several circuit courts of the United States, or any justice thereof, by section two of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, may be exercised in any district in which the powers or jurisdiction

of a circuit court have been or may be conferred on the district court for such district, as if no such powers or jurisdiction had been conferred on such district court; it being the true intent and meaning of said act that the system of bankruptcy thereby established shall be uniform throughout the United States.

Approved, June 8, 1872.

Chapter CXXXV.

An Act to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever a corporation created by the laws of any State, whose business is carried on wholly within the State creating the same, and also any insurance company so created, whether all its business shall be carried on in such State or not, has had proceedings duly commenced against such corporation or company before the courts of such State for the purpose of winding up the affairs of such corporation or company and dividing its assets ratably among its creditors and lawfully among those entitled thereto prior to proceedings having been commenced against such corporation or company under the bankrupt laws of the United States, any order made, or that shall be made, by such court agreeably to the State law for the ratable distribution or payment of any dividend of assets to the creditors of such corporation or company while such State court shall remain actually or constructively in possession or control of the assets of such corporation or company shall be deemed valid notwithstanding proceedings in bankruptcy may have been commenced and be pending against such corporation or company.

Approved, February 13, 1873.

Chapter CCXXXV.

An Act to declare the true intent and meaning of the act approved June eight, eighteen hundred and seventy-two, amendatory of the General Bankrupt Law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it was the true intent and meaning of an act approved June eighth, eighteen

hundred and seventy-two, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved March second, eighteen hundred and sixty-seven," that the exemptions allowed the bankrupt by the said amendatory act should, and it is hereby enacted that they shall, be the amount allowed by the constitution and laws of each State, respectively, as existing in the year eighteen hundred and seventy-one; and that such exemptions be valid against debts contracted before the adoption and passage of such State constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any State court, any decision of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding.

Approved, March 3, 1873.

Chapter CCCLXXXX.

An Act to amend and supplement an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, be, and the same is hereby, amended and supplemented as follows: That the court may, in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt: Provided, That such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors.

§ 2. That section one of said act be, and it is hereby, amended by adding thereto the following words: "Provided, That the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt, as contradistinguished from equitable demands, shall, when such debt does not exceed five hun-

dred dollars, be collected in the courts of the State where such bankrupt resides having jurisdiction of claims of such nature and amount."

§ 3. That section two of said act be, and it hereby is, amended by striking out, in line ten, the words "the same," and inserting the word "any"; and by adding next after the words "adverse interest," in line twelve, the words "or owing any debt to such bankrupt."

§ 4. That unless otherwise ordered by the court, the assignee shall sell the property of the bankrupt, whether real or personal, at public auction, in such parts or parcels and at such times and places as shall be best calculated to produce the greatest amount with the least expense. All notices of public sales under this act by any assignee or officer of the court shall be published once a week for three consecutive weeks in the newspaper or newspapers, to be designated by the judge, which, in his opinion, shall be best calculated to give general notice of the sale. And the court, on the application of any party in interest. shall have complete supervisory power over such sales, including the power to set aside the same and to order a re-sale, so that the property sold shall realize the largest sum. And the court may, in its discretion, order any real estate of the bankrupt, or any part thereof, to be sold for one-fourth cash at the time of sale, and the residue within eighteen months in such instalments as the court may direct, bearing interest at the rate of seven per centum per annum, and secured by proper mortgage or lien upon the property so sold. And it shall be the duty of every assignee to keep a regular account of all moneys received or expended by him as such assignee, to which account every creditor shall, at reasonable times, have free access. If any assignee shall fail or neglect to well and faithfully discharge his duties in the sale or disposition of property as above contemplated, it shall be the duty of the court to remove such assignee, and he shall forfeit all fees and emoluments to which he might be entitled in connection with such sale And if any assignee shall, in any manner, in violation of his duty aforesaid, unfairly or wrongfully sell or dispose of, or in any manner fraudulently or corruptly combine, conspire, or agree with any person or persons, with intent to unfairly or wrongfully sell or dispose of the property committed to his charge, he shall, upon proof thereof, be removed, and forfeit all fees or other compensation for any and all services in connection with such bankrupt's estate, and, upon conviction thereof before any court of competent jurisdiction, shall be liable to a fine of not more than ten thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both fine and imprisonment, at the discre-

tion of the court. And any person so combining, conspiring, or agreeing with such assignee for the purpose aforesaid shall, upon conviction, be liable to a like punishment. That the assignee shall report, under oath, to the court, at least as often as once in three months, the condition of the estate in his charge, and the state of his accounts in detail, and at all other times when the court, on motion or otherwise, shall so order. And on any settlement of the accounts of any assignee, he shall be required to account for all interest, benefit, or advantage received, or in any manner agreed to be received, directly or indirectly, from the use, disposal, or proceeds of the bankrupt's estate. And he shall be required, upon such settlement, to make and file in court an affidavit, declaring, according to the truth, whether he has or has not, as the case may be, received, or is or is not, as the case may be, to receive, directly or indirectly, any interest, benefit, or advantage from the use or deposit of such funds; and such assignee may be examined orally upon the same subject, and if he shall willfully swear falsely, either in such affidavit or examination, or to his report provided for in this section, he shall be deemed to be guilty of perjury, and, on conviction thereof, be punished by imprisonment in the penitentiary not less than one and not more than five years.

§ 5. That section eleven of said act be amended by striking out the words "as the warrant specifies," where they first occur, and inserting the words "as the marshal shall select, not exceeding two;" and inserting after the word "specifies" where it last occurs the words "But whenever the creditors of the bankrupt are so numerous as to make any notice now required by law to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars."

§ 6. That the first clause of section twenty of said act be amended by adding, at the end thereof, the words "or in cases of compulsory bankruptcy, after the act of bankruptcy upon or in respect of which the adjudication shall be made, and with a view of making such set-off."

§ 7. That section twenty-one of said act be amended by inserting the following words in line six, immediately after "thereby": "But a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the bankrupt where a discharge has been refused or the proceedings have been determined without a discharge."

§ 8. That the following words shall be added to section twenty-six of said act: "That in all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness."

§ 9. That in cases of compulsory or involuntary bankruptcy, the provisions of said act, and any amendment thereof, or of any supplement thereto, requiring the payment of any proportion of the debts of the bankrupt, or the assent of any portion of his creditors, as a condition of his discharge from his debts, shall not apply; but he may, if otherwise entitled thereto, be discharged by the court in the same manner and with the same effect as if he had paid such per centum of his debts, or as if the required proportion of his creditors had assented thereto. And in cases of voluntary bankruptcy, no discharge shall be granted to a debtor whose assets shall not be equal to thirty per centum of the claims proved against his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number, and one-third in value; and the provision in section thirty-three of said act of March second, eighteen hundred and sixty-seven, requiring fifty per centum of such assets, is hereby repealed.

§ 10. That in cases of involuntary or compulsory bankruptcy, the period of four months mentioned in section thirty-five of the act to which this is an amendment is hereby changed to two months; but this provision shall not take effect until two months after the passage of this act. And in the cases aforesaid, the period of six months mentioned in said section thirty-five is hereby changed to three months; but this provision shall not take effect until three months after the passage of this act.

§ 11. That section thirty-five of said act be, and the same is hereby, amended as follows:

First. After the word "and" in line eleven, insert the word "knowing."

Secondly. After the word "attachment," in the same line, insert the words "sequestration, seizure."

Thirdly. After the word "and," in line twenty, insert the word "knowing." And nothing in said section thirty-five shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan.

§ 12. That section thirty-nine of said act of March second, eighteen hundred and sixty-seven, be amended so as to read as follows:

"§ 39. That any person residing, and owing debts, as aforesaid, who, after the passage of this act, shall depart from the State, District, or Territory of which he is an inhabitant, with intent to defraud his creditors; or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of the United States or of any State, District, or Territory within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of the United States or of such State, District, or Territory, applicable thereto, for a period of more than twenty days, or has been actually imprisoned for more than twenty days in a civil action founded on contract for the sum of one hundred dollars or upward; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or confess judgment, or give any warrant to confess judgment, or procure his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who being a bank, banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper, (made or passed in the course of his business as such), or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof, at least, in number,

and the aggregate of his debts provable under this act amounts to at least one-third of the debts so provable: Provided, That such petition is brought within six months after such act of bankruptcy shall have been committed. And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the first day of December, eighteen hundred and seventy-three, as well as to those commenced hereafter. And in all cases commenced since the first day of December, eighteen hundred and seventy-three, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegation as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residences and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt. But if such debtor shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned, the court (if satisfied that the admission was made in good faith,) shall so adjudge, which judgment shall be final, and the matter proceed without further steps on that subject. And if it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding twenty days, and, in cases hereafter commenced, ten days, within which other creditors may join in such petition. And if, at the expiration of such time so limited, the number and amount shall comply with the requirements of this section, the matter of bankruptcy may proceed; but if, at the expiration of such limited time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold, assigned, or transferred contrary to this act: Provided, That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent, and knew that a fraud on this act was intended; and such person, if a creditor, shall not, in cases of actual fraud on his part, be allowed to prove for more than a moiety of his debt; and this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy And the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be. And if any of said first five signers

shall not reside in the district in which such petition is to be filed, the name may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers. And in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned. But if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid."

§ 13. That section forty of said act be amended by adding at the end thereof the following words: " And if, on the return-day of the order to show cause as aforesaid, the court shall be satisfied that the requirement of section thirty-nine of said act as to the number and amount of petitioning creditors has been complied with, or if, within the time provided for in section thirty-nine of this act, creditors sufficient in number and amount shall sign such petition so as to make a total of one-fourth in number of the creditors and one-third in the amount of the provable debts against the bankrupt, as provided in said section, the court shall so adjudge, which judgment shall be final; otherwise it shall dismiss the proceedings, and, in cases hereafter commenced, with costs."

§ 14. That section forty-one of said act be amended as follows: After the word " bankruptcy," in line eight, strike out all of said section, and insert the words, " Or, at the election of a debtor, the court may, in its discretion, award a venire facias to the marshal of the district, returnable within ten days before him for the trial of the facts set forth in the petition, at which time the trial shall be had, unless adjourned for cause. And unless, upon such hearing or trial, it shall appear to the satisfaction of said court, or of the jury, as the case may be, that the facts set forth in said petition are true, or if it shall appear that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceeding, the proceeding shall be dismissed and the respondent shall recover costs; and all proceedings in bankruptcy may be discontinued on reasonable notice and hearing, with the approval of the court, and upon the assent, in writing, of such debtor, and not less than one-half of his creditors in number and amount; or, in case all the creditors shall be ordered and entered; and all parties shall be remitted, in either case, to the same rights and duties existing at the date of the filing of the petition for bankruptcy, except so far as

such estate shall have been already administered and disposed of. And the court shall have power to make all needful orders and decrees to carry the foregoing provision into effect."

§ 15. That section eleven of said act be amended by inserting the words "and valuation" after the word "inventory" in the twenty-first line; and that section forty-two of said act be amended by inserting the words "and valuation" after the word "inventory" in the fifteenth line.

§ 16. That section forty-nine of said act be amended by striking out after the word "the" in line five, the words "supreme courts," and inserting in lieu thereof "district courts," and in line six, after the word "States," inserting the words "subject to the general superintendence and jurisdiction conferred upon circuit courts by section two of said act."

COMPOSITION WITH CREDITORS.

§ 17. That the following provisions be added to section forty-three of said act: That in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor of the time, place, and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolutions, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed by this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to, or vary the provisions of, any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner and proceeded with in the same way and with the same consequences as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursuance of this section shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts may be corrected upon reasonable notice, and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a pro-rata payment or satisfaction, in money, to the creditors of such debtor in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner and to the same extent, as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

§ 18. That from and after the passage of this act the fees, commissions, charges, and allowances, excepting actual and necessary disbursements, of, and to be made by the officers, agents, marshals, messengers, assignees, and registers in cases of bankruptcy, shall be reduced to one-half of the fees, commissions, charges, and allowances heretofore provided for or made in like cases: Provided, That the preceding provision shall be and remain in force until the justices of the Supreme Court of the United States shall make and promulgate new rules and regulations in respect to the matters aforesaid, under the powers conferred upon them by sections ten and forty-seven of said act, and no longer, which duties they shall perform as soon as may be. And said justices shall have power under said sections, by general regulations, to simplify and, so far as in their judgment will conduce to the benefit of creditors, to consolidate the duties of the register, assignee, marshal, and clerk, and to reduce fees, costs, and charges,

to the end that prolixity, delay, and unnecessary expense may be avoided. And no register or clerk of court, or any partner or clerk of such register or clerk of court, or any person having any interest with either in any fees or emoluments in bankruptcy, or with whom such register or clerk of court shall have any interest in respect to any matter in bankruptcy, shall be of counsel, solicitor, or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, or in an appeal therefrom. Nor shall they, or either of them, be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy; nor be interested, directly or indirectly, in the fees or emoluments arising from either of said trusts. And the words "except such as are established by this act or by law," in section ten of said act, are hereby repealed.

§ 19. That it shall be the duty of the marshal of each district, in the month of July of each year, to report to the clerk of the district court of such district, in a tabular form, to be prescribed by the justices of the Supreme Court of the United States, as well as such other or further information as may be required by said justices.

First, the number of cases in bankruptcy in which the warrant prescribed in section eleven of said act has come to his hands during the year ending June thirtieth, preceding;

Secondly, how many such warrants were returned, with the fees, costs, expenses, and emoluments thereof, respectively and separately;

Thirdly, the total amount of all other fees, costs, expenses, and emoluments, respectively and separately, earned or received by him during such year from or in respect of any matter in bankruptcy;

Fourthly, a summarized statement of such fees, costs, and emoluments, exclusive of actual disbursements in bankruptcy, received or earned for such year;

Fifthly, a summarized statement of all actual disbursements in such cases for such year.

And in like manner, every register shall, in the same month and for the same year, make a report to such clerk of,

First, the number of voluntary cases in bankruptcy coming before him during said year;

Secondly, the amount of assets and liabilities, as nearly as may be, of the bankrupts;

Thirdly, the amount and rate per centum of all dividends declared;

Fourthly, the disposition of all such cases;

Fifthly, the number of compulsory cases in bankruptcy coming before him, in the same way;

Sixthly, the amount of assets and liabilities, as nearly as may be, of such bankrupt;

Seventhly, the disposition of all such cases;

Eighthly, the amounts and rate per centum of all dividends declared in such cases;

Ninthly, the total amount of fees, charges, costs, and emoluments of every sort, received or earned by such register during said year in each class of cases above stated.

And in like manner, every assignee shall, during said month, make like return to such clerk of,

First, the number of voluntary and compulsory cases, respectively and separately, in his charge during said year;

Secondly, the amount of assets and liabilities therein, respectively and separately;

Thirdly, the total receipts and disbursements therein, respectively and separately;

Fourthly, the amount of dividends paid or declared, and the rate per centum thereof, in each class, respectively and separately;

Fifthly, the total amount of all his fees, charges, and emoluments, of every kind therein, earned or received;

Sixthly, the total amount of expenses incurred by him for legal proceedings and counsel-fees;

Seventhly, the disposition of the cases respectively;

Eighthly, a summarized statement of both classes as aforesaid.

And in like manner, the clerk of said court, in the month of August in each year, shall make up a statement for such year, ending June thirtieth, of

First, all cases in bankruptcy pending at the beginning of the said year;

Secondly, all of such cases disposed of;

Thirdly, all dividends declared therein;

Fourthly, the number of reports made from each assignee therein;

Fifthly, the disposition of all such cases;

Sixthly, the number of assignees' accounts filed and settled;

Seventhly, whether any marshal, register, or assignee has failed to make and file with such clerk the reports by this act required, and if any have failed to make such reports, their respective names and residences.

And such clerk shall report in respect of all cases begun during said year.

And he shall make a classified statement, in tabular form, of all his fees, charges, costs, and emoluments, respectively earned or accrued during said year, giving each head under which the same accrued, and also the sum of all moneys paid into and disbursed out of court in bankruptcy, and the balance in hand or on deposit.

And all the statements and reports herein required shall be under oath, and signed by the persons respectively making the same.

And said clerk shall, in said month of August, transmit every such statement and report so filed with him, together with his own statement and report aforesaid, to the Attorney-General of the United States.

Any person who shall violate the provisions of this section shall, on motion made, under the direction of the Attorney-General, be by the district court dismissed from his office, and shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment not exceeding one year.

§ 20. That in addition to the officers now authorized to take proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof, in the manner and under the regulations provided by law; such proof to be certified by the notary and attested by his signature and official seal.

§ 21. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, June 22, 1874.

Chapter LXII.

An Act concerning cases in bankruptcy commenced in the supreme courts of the several territories prior to the twenty-second day of June, eighteen hundred and seventy-four, and now undetermined therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in bankruptcy commenced in the supreme courts of any of the Territories of the United States prior to the twenty-second day of June, Anno Domini eighteen hundred and seventy-four, and now undetermined therein, the clerks of the said several courts shall immediately transmit to the clerks of the district courts of the several districts of

said Territories all the papers in, and a certified transcript of, all the proceedings had in each of said cases; and the said clerks of the district courts shall immediately file the said papers and transcripts as papers and transcripts in the said district courts.

§ 2. That the clerks of the said several supreme courts shall transmit the papers and transcripts provided for in section one of this act, in each case, to the clerk of the district court of the district wherein the bankrupt or bankrupts, or some one of them, resided at the time of the filing of the petition in bankruptcy in said case; and as soon as the said papers and transcript in any case shall have been transmitted and filed, as herein provided, the district court in which the same shall have been so filed shall have jurisdiction of the said case, to hear and determine all questions arising therein, and to finally adjudicate and determine the same in all respects as contemplated, in other bankruptcy cases by the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," and approved March second, eighteen hundred and sixty-seven, and amendments thereto.

Approved, April 14, 1876.

Chapter CLX.

An Act to repeal the Bankruptcy Law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the bankrupt law approved March second, eighteen hundred and sixty-seven, title sixty-one, Revised Statutes, and an act entitled "An act to amend and supplement an act entitled an act to establish a uniform system of bankruptcy throughout the United States, approved March second, eighteen hundred and sixty-seven, and for other purposes, approved June twenty-second, eighteen hundred and seventy-four," and all acts in amendment or supplementary thereto or in explanation thereof, be, and the same are hereby, repealed: Provided, however, That such repeal shall in no manner invalidate or affect any case in bankruptcy instituted and pending in any court prior to the day when this act shall take effect; but as to all such pending cases and all future proceedings therein, and in respect of all pains, penalties, and forfeitures which shall have been incurred under any of said acts prior to the day when this act takes effect, or which may be thereafter incurred, under any of those provisions of any of said acts which, for the purposes named in this act,

are kept in force, and all penal actions and criminal proceedings for a violation of any of said acts, whether then pending or thereafter instituted, and in respect of all rights of debtors and creditors (except the right of commencing original proceedings in bankruptcy), and all rights of, and suits by, or against assignees, under any, or all of said acts, in any matter or case which shall have arisen prior to the day when this act takes effect (which shall be on the first day of September, Anno Domini eighteen hundred and seventy-eight), or in any matter or case which shall arise after this act takes effect, in respect of any matter of bankruptcy authorized by this act to be proceeded with after said last-named day, the acts hereby repealed shall continue in full force and effect until the same shall be fully disposed of, in the same manner as if said acts had not been repealed.

Approved, June 7, 1878.

THE BANKRUPTCY ACT OF 1898.

CHAPTER I.

DEFINITIONS.

SECTION 1. **Meaning of Words and Phrases.**— (a.) The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(1.) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition;

(2.) "Adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed;

(3.) "Appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States;

(4.) "Bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

(5.) "Clerk" shall mean the clerk of a court of bankruptcy;

(6.) "Corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association;

(7.) "Court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee;

(8.) "Courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska;

(9.) "Creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

(10.) "Date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed;

(11.) "Debt" shall include any debt, demand, or claim provable in bankruptcy;

(12.) "Discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act;

(13.) "Document" shall include any book, deed, or instrument in writing;

(14.) "Holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving;

(15.) A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts;

(16.) "Judge" shall mean a judge of a court of bankruptcy, not including the referee;

(17.) "Oath" shall include affirmation;

(18.) "Officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer;

(19.) "Persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations;

(20.) "Petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named;

(21.) "Referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead;

(22.) "Conceal" shall include secrete, falsify, and mutilate;

(23.) "Secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets;

(24.) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia;

(25.) "Transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security;

(26.) "Trustee" shall include all of the trustees of an estate;

(27.) "Wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year;

(28.) Words importing the masculine gender may be applied to and include corporations, partnerships, and women;

(29.) Words importing the plural number may be applied to and mean only a single person or thing;

(30.) Words importing the singular number may be applied to and mean several persons or things.

CHAPTER II.

CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

§ 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to

(1.) Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business,

reside, or have their domicile within the United States but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions;

(2.) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(3.) Appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified;

(4.) Arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5.) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates;

(6.) Bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy;

(7.) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided;

(8.) Close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered;

(9.) Confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases;

(10.) Consider and confirm, modify or overrule, or return, with instructions for further proceedings, records or findings certified to them by referees;

(11.) Determine all claims of bankrupts to their exemptions;

(12.) Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

(13.) Enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14.) Extradite bankrupts from their respective districts to other districts;

(15.) Make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act;

(16.) Punish persons for contempts committed before referees;

(17.) Pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them;

(18.) Tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and

(19.) Transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

CHAPTER III.

BANKRUPTS.

§ 3. **Acts of Bankruptcy.**— (a.) Acts of bankruptcy by a person shall consist of his having:

(1.) Conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or

(2.) Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or

(3.) Suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or

(4.) Made a general assignment for the benefit of his creditors; or

(5.) Admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b.) A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months

after: (1.) The date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

(c.) It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

(d.) Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

(e.) Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and dam-

ages shall be fixed and allowed by the court, and paid by the obligors in such bond.

§ 4. **Who May Become Bankrupts.**— (a.) Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

(b.) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

§ 5. **Partners.**— (a.) A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(b.) The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

(c.) The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

(d.) The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

(e.) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(f.) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

(g.) The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal

the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(h.) In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

§ 6. **Exemptions of Bankrupts.**— (a.) This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

§ 7. **Duties of Bankrupts.**—(a.) The bankrupts shall —

(1.) Attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed;

(2.) Comply with all lawful orders of the court;

(3.) Examine the correctness of all proofs of claims filed against his estate;

(4.) Execute and deliver such papers as shall be ordered by the court;

(5.) Execute to his trustee transfers of all his property in foreign countries;

(6.) Immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge;

(7.) In case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee;

(8.) Prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled

to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and

(9.) When present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

§ 8. **Death or Insanity of Bankrupts.**— (a.) The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided*, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

§ 9. **Protection and Detention of Bankrupts.**— (a.) A bankrupt shall be exempt from arrest upon civil process except in the following cases:

(1.) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders;

(2.) When issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

(b.) The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bank-

ruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

§ 10. **Extradition of Bankrupts.**— (a.) Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

§ 11. **Suits By and Against Bankrupts.**— (a.) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

(b.) The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

(c.) A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d.) Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

§ 12. **Compositions, when Confirmed.**— (a.) A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and lists of his creditors, required to be filed by bankrupts.

(b.) An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount

of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

(c.) A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

(d.) The judge shall confirm a composition if satisfied that

(1.) It is for the best interests of the creditors;

(2.) The bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and

(3.) The offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

(e.) Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

§ 13. **Compositions, when Set Aside.**— (a.) The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

§ 14. **Discharges, when Granted.**— (a.) Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

(b.) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has

(1.) Committed an offense punishable by imprisonment as herein provided; or

(2.) With fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

(c.) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

§ 15. **Discharges, when Revoked.**— (a.) The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

§ 16. **Co-Debtors of Bankrupts.**— (a.) The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

§ 17. **Debts not Affected by a Discharge.**— (a.) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as

(1.) Are due as a tax levied by the United States, the State, county, district, or municipality in which he resides;

(2.) Are judgments in actions for fraud, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another;

(3.) Have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or

(4.) Were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

CHAPTER IV.

COURTS AND PROCEDURE THEREIN.

§ 18. **Process, Pleadings, and Adjudications.**— (a.) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the

United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in courts of the United States.

(b.) The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow.

(c.) All pleadings setting up matters of fact shall be verified under oath.

(d.) If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this Act, and makes the adjudication or dismiss the petition.

(e.) If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f.) If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

(g.) Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

§ 19. **Jury Trials.**—(a.) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b.) If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or,

if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

(c.) The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

§ 20. **Oaths, Affirmations.**— (a.) Oaths required by this Act, except upon hearings in court, may be administered by (1) referees ; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b.) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

§ 21. **Evidence.**—(a) A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act.

(b.) The right to take depositions in proceedings under this Act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

(c.) Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

(d.) Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e.) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

(f.) A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

(g.) A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

§ 22. **Reference of Cases After Adjudication.**— (a.) After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues ; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

(b.) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

§ 23. **Jurisdiction of United States and State Courts.**— (a.) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b.) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

(c.) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act.

§ 24. **Jurisdiction of Appellate Courts.**— (a.) The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

(b.) The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

§ 25. **Appeals and Writs of Error.**— (a.) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

(b.) From any final decision of a court of appeals, allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other :

(1.) Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a state to the Supreme Court of the United States ; or

(2.) Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

(c.) Trustees shall not be required to give bond when they take appeals or sue out writs of error.

(d.) Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

§ 26. **Arbitration of Controversies.**— (a.) The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b.) Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

(c.) The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

§ 27. **Compromises.**— (a.) The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

§ 28. **Designation of Newspapers.**— (a.) Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this Act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

§ 29. **Offenses.**— (a.) A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

(b.) A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation

to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

(c.) A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

(d.) A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

§ 30. **Rules, Forms, and Orders.**— (a.) All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

§ 31. **Computation of Time.**— (a.) Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

§ 32. **Transfer of Cases.**— (a.) In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

CHAPTER V.

OFFICERS, THEIR DUTIES AND COMPENSATION.

§ 33. **Creation of Two Offices.**— (a.) The offices of referee and trustee are hereby created.

§ 34. **Appointment, Removal, and Districts of Referees.**— (a.) Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1.) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2.) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

§ 35. **Qualifications of Referees.**— (a.) Individuals shall not be eligible to appointment as referees unless they are respectively (1.) competent to perform the duties of that office; (2.) not holding any office of profit or emolument under the laws of the United States or of any state other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3.) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4.) residents of, or have their offices in, the territorial districts for which they are to be appointed.

§ 36. **Oaths of Office of Referees.**— (a.) Referees shall take the same oath of office as that prescribed for judges of United States courts.

§ 37. **Number of Referees.**— (a.) Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

§ 38. **Jurisdiction of Referees.**— (a.) Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to

(1.) Consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions;

(2.) Exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses

and for requiring the production of documents in proceedings before them, except the power of commitment;

(3.) Exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act;

(4.) Perform such part of the duties, except as to questions arising out of the application of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and

(5.) Upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

§ 39. **Duties of Referees.**— (a.) Referees shall

(1.) Declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable;

(2.) Examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended;

(3.) Furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest;

(4.) Give notices to creditors as herein provided;

(5.) Make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges;

(6.) Prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so;

(7.) Safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded;

(8.) Transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts and in like manner secure the return of such papers after they have been

used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail;

(9.) Upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and

(10.) Whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

(b.) Referees shall not

(1.) Act in cases in which they are directly or indirectly interested;

(2.) Practice as attorneys and counselors at law in any bankruptcy proceedings; or

(3.) Purchase, directly or indirectly, any property of an estate in bankruptcy.

§ 40. **Compensation of Referees.**— (a.) Referees shall receive as full compensation for their services, payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

(b.) Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

(c.) In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

§ 41. **Contempts Before Referees.**— (a.) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to the law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of

his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b.) The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

§ 42. **Records of Referees.**— (a.) The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

(b.) A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

(c.) The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

§ 43. **Referee's Absence or Disability.**—(a.) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

§ 44. **Appointment of Trustees.**— (a.) The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

§ 45. **Qualifications of Trustees.**—(a.) Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which

they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

§ 46. **Death or Removal of Trustees.**— (a.) The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

§ 47. **Duties of Trustees.**— (a.) Trustees shall respectively

(1.) Account for and pay over to the estates under their control all interest received by them upon property of such estates;

(2.) Collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest;

(3.) Deposit all money received by them in one of the designated depositories;

(4.) Disburse money only by check or draft on the depositories in which it has been deposited;

(5.) Furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest;

(6.) Keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts;

(7.) Lay before the final meeting of the creditors detailed statements of the administration of the estates;

(8.) Make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors;

(9.) Pay dividends within ten days after they are declared by the referees;

(10.) Report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and

(11.) Set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

(b.) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

§ 48. **Compensation of Trustees.**— (a.) Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

(b.) In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

(c.) The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

§ 49. **Accounts and Papers of Trustees.**— (a.) The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

§ 50. **Bonds of Referees and Trustees.**— (a.) Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

(b.) Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c.) The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has

been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

(d.) The court shall require evidence as to the actual value of the property of sureties.

(e.) There shall be at least two sureties upon each bond.

(f.) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g.) Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h.) Bonds of referees, trustees, and designated depositories shall be filed on record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

(i.) Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this Act, of whose estates they are respectively trustees.

(j.) Joint trustees may give joint or several bonds.

(k.) If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

(l.) Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m.) Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

§ 51. **Duties of Clerks.**— (a.) Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the peti-

tioner is without, and can not obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

§ 52. **Compensation of Clerks and Marshals.**— (a.) Clerks shall respectively receive as full compensation for their service to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

(b.) Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their service in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

§ 53. **Duties of Attorney-General.**—(a.) The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

§ 54. **Statistics of Bankruptcy Proceedings.**— (a.) Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

CHAPTER VI.

CREDITORS.

§ 55. **Meetings of Creditors.**— (a.) The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county

seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

(b.) At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

(c.) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this Act.

(d.) A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

(e.) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(f.) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

§ 56. **Voters at Meetings of Creditors.**— (a.) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

(b.) Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

§ 57. **Proof and Allowance of Claims.**— (a.) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b.) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

(c.) Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

(d.) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e.) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the court seem to be owing over and above the value of their securities or priorities.

(f.) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g.) The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

(h.) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i.) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove

such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j.) Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k.) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

(l.) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

(m.) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n.) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

§ 58. **Notice to Creditors.**— (a.) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of

(1.) All examinations of the bankrupt;

(2.) All hearings upon applications for the confirmation of compositions or the discharge of bankrupts;

(3.) All meetings of creditors;

(4.) All proposed sales of property;

(5.) The declaration and time of payment of dividends;

(6.) The filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon;

(7.) The proposed compromise of any controversy, and

(8.) The proposed dismissal of the proceedings.

(b.) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

(c.) All notices shall be given by the referee, unless otherwise ordered by the judge.

§ 59. **Who may File and Dismiss Petitions.**— (a.) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b.) Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c.) Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

(d.) If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e.) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

(f.) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

(g.) A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

§ 60. **Preferred Creditors.**— (a.) A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

(b.) If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

(c.) If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d.) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

CHAPTER VII.

ESTATES.

§ 61. **Depositories for Money.**—(a.) Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time

to time, as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

§ 62. **Expenses of Administering Estates.**— (a.) The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

§ 63. **Debts Which May be Proved.**— (a.) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

(b.) Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

§ 64. **Debts which have Priority.**— (a.) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b.) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent

to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

(c.) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

§ 65. **Declaration and Payment of Dividends.**—(a.) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b.) The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

(c.) The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

(d.) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

(e.) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

§ 66. **Unclaimed Dividends.**— (a.) Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

(b.) Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

§ 67. **Liens.**— (a.) Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

(b.) Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

(c.) A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate,

shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

(d.) Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

(e.) That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debt by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

(f.) That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be

preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

§ 68. **Set-Offs and Counterclaims.**— (a.) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b.) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

§ 69. **Possession of property.**— (a.) A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

§ 70. **Title to property.**— (a.) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) docu-

ments relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

(b.) All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

(c.) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(d.) Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

(e.) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

(f.) Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him.

THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

§ (71.) (a.) This Act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

(b.) Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.

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